

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

UNITED STATES OF AMERICA

Plaintiff,

v.

**LIBERTY PROPERTY LIMITED
PARTNERSHIP AND LIBERTY PROPERTY
TRUST**

Defendants.

CIVIL ACTION NO.

CONSENT DECREE

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I. BACKGROUND

A. The United States of America ("United States"), on behalf of the Administrator of the United States Environmental Protection Agency ("EPA"), filed a complaint in this matter pursuant to Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended, ("CERCLA"), 42 U.S.C. §§ 9606 and 9607.

B. The United States in its complaint seeks, inter alia, the performance of response actions pursuant to the Record of Decision ("ROD") for the Site issued by EPA on September 27, 2000, on portions of the Crater Resources Superfund Site (the "Site"), such portions of the properties known as the "Yellow Property", the "Pink Property", "3000 Horizon Drive" and any other land owned by Liberty Property Limited Partnership, a Pennsylvania Limited Partnership, or its sole general partner, Liberty Property Trust, a Maryland Real Estate Investment Trust, (referred to collectively herein as "Liberty" or "Settling Defendants") upon which the Waste Ammonia

Liquor ("WAL") Pipeline was located or hazardous substances from the WAL Pipeline have come to be located, referred to collectively herein, and defined below, as the "Property", and Quarry 4. The complaint also seeks access to the Property.

C. In accordance with the National Contingency Plan ("NCP") and Section 121(f)(1)(F) of CERCLA, 42 U.S.C. § 9621(f)(1)(F), EPA notified the Commonwealth of Pennsylvania (the "State") in the fall of 2002 of negotiations with potentially responsible parties regarding the implementation of the remedial design and remedial action for the Site, and EPA has provided the State with an opportunity to participate in such negotiations and be a party to this Consent Decree.

D. In accordance with Section 122(j)(1) of CERCLA, 42 U.S.C. § 9622(j)(1), EPA notified the Department of Interior ("DOI") and the National Oceanographic and Atmospheric Administration ("NOAA") on May 12, 2000, of negotiations with potentially responsible parties regarding the release of hazardous substances that may have resulted in injury to the natural resources under Federal trusteeship and encouraged the trustees to participate in the negotiation of this Consent Decree.

E. The Settling Defendants (1) do not admit any liability to the Plaintiff arising out of the transactions or occurrences alleged in the complaint; (2) do not admit any of the allegations in the complaint; (3) do not admit that the release or threatened release of hazardous substances at or from the Site constitutes an imminent or substantial endangerment to the public health or welfare or the environment; and (4) do not admit any other issue of law or fact except as specifically provided herein.

F. Pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, EPA placed the Site on the

National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on October 14, 1992, 57 Fed. Reg. 47180.

G. On September 17, 1994, Beazer East, Inc., Keystone Coke Company, Inc., and Vesper Corporation (collectively referred to as the "Crater PRP Group") entered into an Administrative Order on Consent ("AOC") for the performance of a Remedial Investigation/Feasibility Study. On April 20, 2000, EPA notified the Crater PRP Group of its intentions to modify and approve the Draft Feasibility Study.

H. Pursuant to Section 117 of CERCLA, 42 U.S.C. § 9617, EPA published notice of the Proposed Plan for remedial action on June 16, 2000, in a major local newspaper of general circulation. EPA provided an opportunity for written and oral comments from the public on the proposed plan for remedial action. A copy of the transcript of the public meeting is available to the public as part of the administrative record upon which the Regional Administrator based the selection of the response action.

I. The decision by EPA on the remedial action to be implemented at the Site is embodied in the ROD, on which the State had a reasonable opportunity to review and comment. The State has concurred on the issuance of the ROD. The ROD selected a remedial action which included the following components: removal of all contaminated soils and sediment in Quarry 3; construction of a cap to prevent unacceptable leaching of contaminants from Quarries 1, 2 and 4 and other contaminated soil areas into the groundwater; monitored natural attenuation of the groundwater, with a contingent groundwater remedy; further investigation of the former WAL pipeline; and institutional controls.

J. On April 30, 2001, EPA issued a Unilateral Administrative Order for Remedial Design and Remedial Action ("RD/RA UAO") for the Site to Beazer East, Inc., Crater Resources, Inc.,

Each Parcel As Is, Inc., Gulph Mills Golf Club, Inc., Keystone Coke Company, Inc., R-T Option Corporation, and Vesper Corporation (collectively referred to as the "UAO Respondents") and to Liberty.

K. The RD/RA UAO set forth Findings of Fact ("Findings") which are incorporated herein by reference.

L. Liberty is the owner of properties, in and around the Site, including properties commonly referred to as: the Yellow Property (approximately 44.5 acres), the Pink Property (approximately 21 acres) and 3000 Horizon Drive (approximately 7.31 acres). (The deeds for these properties are attached hereto as Appendices B, C and D.) Portions of the Yellow Property, the Pink Property and 3000 Horizon Drive are part of the Site as defined in the ROD and as depicted on Appendix E. After consulting with EPA, Liberty performed some work at and around the Site, including site characterization; soil and ground water sampling; well installation; construction of an office complex, a lined retention basin, and a parking lot over a portion of Quarry 4; WAL pipeline removal; and removal of contaminated soils. In addition, Liberty remediated impacted soils at the Yellow Property in the Cinder/Slag/Fill area and Excavations 1,2, and 3 in coordination with EPA, and performed other environmental response actions at the direction of EPA. Liberty represents that it has expended in excess of \$1,261,645.00 for the environmental work described above. Liberty owns other parcels of land in King of Prussia, Pennsylvania, which are not within the Site and therefore are not within the scope of this Consent Decree. Other than portions of the Yellow Property, the Pink Property and 3000 Horizon Drive, EPA and Liberty know of no other property owned by Liberty, within the Site, except to the extent that the WAL Pipeline, or hazardous substances from the WAL Pipeline, may be found to be located on any Liberty property in the future. EPA reviewed and approved in a letter dated September 30,

2003, the Remedial Action Report for the Cinder/Slag Fill Area (OU7) located on Liberty Property Trust's 2301 Renaissance Boulevard Property (a parcel included in the "Yellow Property"), submitted to EPA by Penn Environmental and Remediation ("Penn E&R") on September 29, 2003. This letter constitutes the "Certification of Completion" of the Remedial Action, as defined in Section XX.A.2 of the RD/RA UAO for this portion of the work. In addition, EPA issued two letters on March 26, 2002, approving the Report of Finding for Limited Remedial Activities Implemented in Excavation No. 2 on Liberty Property Trust's 2301 Renaissance Boulevard Property, submitted to EPA on March 8, 2002; and the Report of Finding for Limited Remedial Activities Implemented in Excavation No. 3 on Liberty Property Trust's 2301 Renaissance Boulevard Property, submitted to EPA on March 8, 2002 for the Site. EPA acknowledges that Liberty has investigated and remediated its section of the Pipeline on the "Pink" and "Yellow" Properties according to PADEP Act 2 standards. EPA has reviewed the reports associated with these actions, and accepts the Pipeline removal work as submitted for the "Pink", and "Yellow" Properties. Confirmation sampling conducted by Liberty indicates that the residual soils meet PADEP Act 2 statewide health standards.

M. The RD/RA UAO, in Subparagraph VI.H., entitled "Obligations of Liberty", provides that:

Liberty shall perform all work which the ROD requires for: 1) the entirety of Quarry No. 4, including that portion of the Quarry owned by the Gulph Mills Golf Course; 2) Liberty's property known as the Yellow Property; and 3) Liberty's property known as the Pink Property, with the exception of the selected and contingent ground water remedies. The other Respondents shall remain liable for the work to be performed by Liberty and shall perform said work in the event that EPA determines that Liberty is not performing as required and provides the other

Respondents with written notice of said determination. Liberty shall be responsible for complying with all of the requirements of this Order only as they relate to: 1) the entirety of Quarry No. 4, including that portion of the Quarry owned by the Gulph Mills Golf Course; 2) Liberty's property known as the Yellow Property; and 3) Liberty's property known as the Pink Property.

Liberty shall also be responsible to coordinate its activities with EPA and the other performing Respondents, and to perform its obligations in a manner that will not interfere with the performance of the other Respondents.

N. The UAO Respondents and Liberty notified EPA on June 1, 2001 of their intent to comply with the RD/RA UAO.

O. The United States has agreed, at Liberty's request, to permit Liberty to implement the work required of it by the RD/RA UAO pursuant to a Consent Decree, and terminate the RD/RA UAO, as it applies to Liberty. The work to be performed by Liberty pursuant to this Consent Decree shall be hereinafter referred to as the "Work" and is defined more fully in Paragraph 4. Liberty has requested permission to perform a demonstration project to determine whether the "multimedia cap consisting of a series of low-permeability clays, geotextile liners, sand drainage layers constructed in accordance with the Commonwealth's Residual Waste Management Regulations for final cover of Class 1 residual waste landfills, set forth at 25 Pa. Code Sections 288.234 and 288.236-237" selected in the ROD, is not necessary to prevent unacceptable leaching of contaminants from the soils and sediment in and around Quarry 4 into the groundwater at the Site. EPA has agreed to permit Liberty to perform such a demonstration project, defined more fully in Paragraph 11.a, below.

P. It is the intent of the Parties herein to convert Liberty's obligations under the RD/RA

UAO into obligations under this Consent Decree, and to entitle Liberty to the rights conferred upon it herein; provided, however, that this Consent Decree represents the entire agreement among the Parties, as set forth in Section XXXV herein, and the RD/RA UAO and the obligations set forth therein shall no longer apply to Liberty as of the effective date of the Consent Decree.

Q. Based on the information presently available to EPA, EPA believes that the Work will be properly and promptly conducted by the Settling Defendants if conducted in accordance with the requirements of this Consent Decree and its appendices.

R. Solely for the purposes of Section 113(j) of CERCLA, 42 U.S.C. § 9613(j), the Remedial Action selected by the ROD and the Work to be performed by the Settling Defendants shall constitute a response action taken or ordered by the President.

S. The Parties recognize, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties in good faith and implementation of this Consent Decree will expedite the cleanup of the Site and will avoid prolonged and complicated litigation between the Parties, and that this Consent Decree is fair, reasonable, and in the public interest.

NOW, THEREFORE, it is hereby Ordered, Adjudged, and Decreed:

II. JURISDICTION

1. This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. §§ 1331, 1345, and 42 U.S.C. §§ 9606, 9607, and 9613(b). This Court also has personal jurisdiction over the Settling Defendants. Solely for the purposes of this Consent Decree and the underlying complaint, Settling Defendants waive all objections and defenses that they may have to

jurisdiction of the Court or to venue in this District. Settling Defendants shall not challenge the terms of this Consent Decree or this Court's jurisdiction to enter and enforce this Consent Decree.

III. PARTIES BOUND

2. This Consent Decree applies to and is binding upon the United States and upon Settling Defendants and their successors and assigns. Any change in ownership or corporate status of a Settling Defendant including, but not limited to, any transfer of assets or real or personal property, shall in no way alter such Settling Defendants' responsibilities under this Consent Decree.

3. Settling Defendants shall provide a copy of this Consent Decree to each contractor hired to perform the Work (as defined below) required by this Consent Decree and to each person representing any Settling Defendant with respect to the Site or the Work and shall condition all contracts entered into hereunder upon performance of the Work in conformity with the terms of this Consent Decree. Settling Defendants or their contractors shall provide written notice of the Consent Decree to all subcontractors hired to perform any portion of the Work required by this Consent Decree. Settling Defendants shall nonetheless be responsible for ensuring that their contractors and subcontractors perform the Work contemplated herein in accordance with this Consent Decree. With regard to the activities undertaken pursuant to this Consent Decree, each contractor and subcontractor shall be deemed to be in a contractual relationship with the Settling Defendants within the meaning of Section 107(b)(3) of CERCLA, 42 U.S.C. § 9607(b)(3).

IV. DEFINITIONS

4. Unless otherwise expressly provided herein, terms used in this Consent Decree which are defined in CERCLA or in regulations promulgated under CERCLA shall have the meaning assigned to them in CERCLA or in such regulations. Whenever terms listed below are used in this Consent Decree or in the appendices attached hereto and incorporated hereunder, the following definitions shall apply:

"Agreement and Certification of Successor in Interest and/or Assign" shall mean an agreement relating to the Property or portion thereof in the form attached as Appendix F.

"CERCLA" shall mean the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. §§ 9601 et seq.

"Consent Decree" shall mean this Decree and all appendices attached hereto (listed in Section XXIX). In the event of conflict between this Decree and any appendix, this Decree shall control.

"Day" shall mean a calendar day unless expressly stated to be a working day. A "working day" shall mean a day other than a Saturday, Sunday, or Federal holiday. In computing any period of time under this Consent Decree, where the last day would fall on a Saturday, Sunday, or Federal holiday, the period shall run until the close of business of the next working day.

"Duly Authorized Representative" shall mean a person set forth or designated in accordance with the procedures set forth in 40 C.F.R. § 270.11(b).

"Effective date" shall be the effective date of this Consent Decree as provided in Section XXVII of this Consent Decree.

"EPA" shall mean the United States Environmental Protection Agency and any successor departments or agencies of the United States.

"Existing Contamination" shall mean:

- i. any hazardous substances, pollutants and/or contaminants determined by EPA to be present or existing on or under the Property, as such property is defined herein, as of the Effective Date of this Consent Decree;
- ii. any hazardous substances, pollutants and/or contaminants determined by EPA to have migrated from the Property prior to the Effective Date of this Consent Decree;
- and
- iii. any hazardous substances, pollutants and/or contaminants present at the Site determined by EPA to have migrated onto or under or from the Property after the Effective Date of this Consent Decree but only if Liberty or the Successor in Interest and/or Assign did not or does not cause or exacerbate such migration.

"Future Response Costs" shall mean all costs not inconsistent with the NCP, including, but not limited to, direct and indirect costs that the United States incurs from the date of lodging of this Consent Decree in implementing or enforcing this Consent Decree and the Second Administrative Settlement Agreement and Order On Consent For Removal Action, EPA Docket No. CERC-03-2005-0365DC (September 29, 2005), including, but not limited to, payroll costs, contractor costs, travel costs, laboratory costs, State cooperative agreement costs, the costs incurred pursuant to this Consent Decree's Sections VII (Remedy Review), IX (Access and Institutional Controls)(including but not limited to, attorneys fees and any monies paid to secure access and/or to secure institutional controls, including the amount of just compensation), XV (Emergency Response), and XVI (Payment For Response Costs).

"Interest" shall mean interest at the rate specified for interest on investments of the

Hazardous Substance Superfund established by 26 U.S.C. § 9507, compounded annually on October 1 of each year, in accordance with 42 U.S.C. § 9607(a). The applicable rate of interest shall be the rate in effect at the time the interest accrues. The rate of interest is subject to change on October 1 of each year.

“National Contingency Plan” or “NCP” shall mean the National Oil and Hazardous Substances Pollution Contingency Plan promulgated pursuant to Section 105 of CERCLA, 42 U.S.C. § 9605, codified at 40 C.F.R. Part 300, and any amendments thereto.

“Operation and Maintenance” or “O & M” shall mean all activities required to maintain the effectiveness of the Remedial Action as required under the Operation and Maintenance Plan approved or developed by EPA pursuant to this Consent Decree.

“Owner Settling Defendant” shall mean Liberty Property Limited Partnership.

“PADEP” shall mean the Pennsylvania Department of Environmental Protection and any successor departments or agencies of the State.

“Paragraph” shall mean a portion of this Consent Decree identified by an arabic numeral or an upper case letter.

“Parties” shall mean the United States and the Settling Defendants.

“Past Response Costs” shall mean all costs, including but not limited to, all direct and indirect costs, that the United States has paid or incurred at or in connection with the Site prior to the date of lodging of this Consent Decree, plus interest on all such costs which may have accrued pursuant to 42 U.S.C. § 9607(a).

“Performance Standards” shall mean the cleanup standards and other measures of achievement of the goals of the Remedial Action, set forth on pages 56-60 of the ROD attached

hereto as Appendix A, and the cleanup standards that are proposed by the Settling Defendants and approved by EPA.

“Plaintiff” shall mean the United States.

“Property” shall mean the property commonly referred to as the “Yellow Property”, the property commonly referred to as the “Pink Property”, and 3000 Horizon Drive in Upper Merion, Pennsylvania, all of which are owned by Owner Settling Defendant, as designated on the map attached hereto as Appendix E, and further described in the Deeds attached hereto as Appendices B, C and D, and any other land owned by Liberty, upon which the WAL Pipeline is located, or upon which hazardous substances from the WAL Pipeline have come to be located. The Yellow Property consists of 1) “Yellow North” containing: 2520 Renaissance Blvd (Tax Parcel No. 58-00-15956-33-9); 2540 Renaissance Blvd (Tax Parcel No. 58-00-18603-00-5); and 2560 Renaissance Blvd (Tax Parcel No. 58-00-18603-00-5), and 2) “Yellow South” containing : 2301 Renaissance Blvd (Tax Parcel No. 58-00-18603-01-4); and 2201 Renaissance Blvd (Tax Parcel No. 58-00-15956-05-1). The Pink Property consists of 1) “Pink North” containing: 2900 Horizon Drive (Tax Parcel No. 58-00-15956-20-4), and 2700 Horizon Drive (Tax Parcel No. 58-00-15956-30-3), and 2) “Pink South” containing 2300 Renaissance Blvd (Tax Parcel No. 58-00-15956-32-1), and 2500 Renaissance Blvd (Tax Parcel No. 58-00-15956-31-2).

“Quarry 4” shall mean the quarry designated as Quarry 4 in the Record of Decision issued by EPA on September 27, 2000 for the Site.

“RCRA” shall mean the Solid Waste Disposal Act, as amended, 42 U.S.C. §§ 6901 et seq. (also known as the Resource Conservation and Recovery Act).

“Record of Decision” or “ROD” shall mean the EPA Record of Decision relating to the Site

signed on September 27, 2000, by the Director, Hazardous Site Cleanup Division, EPA Region III and all attachments thereto, and all Explanations of Significant Differences ("ESDs") and/or ROD Amendments ("Amendments") issued by EPA which may be necessitated by the results of the Demonstration Project described herein. The ROD is attached as Appendix A.

"Remedial Action" shall mean those activities, except for Remedial Design and Operation and Maintenance, to be undertaken by the Settling Defendants to implement the portions of the ROD applicable to them under this Consent Decree, in accordance with the final Remedial Design and Remedial Action Work Plans and other plans approved by EPA.

"Remedial Action Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Remedial Design" shall mean those activities to be undertaken by the Settling Defendants to develop the final plans and specifications for the Remedial Action pursuant to the Remedial Design Work Plan.

"Remedial Design Work Plan" shall mean the document developed pursuant to Paragraph 11 of this Consent Decree and approved by EPA, and any amendments thereto.

"Section" shall mean a portion of this Consent Decree identified by a Roman numeral.

"Settling Defendants" shall mean Liberty Property Limited Partnership, a Pennsylvania Limited Partnership, and Liberty Property Trust, a Maryland Real Estate Investment Trust.

"Site" shall mean the Crater Resources Superfund Site, encompassing approximately 50 acres, located in Upper Merion Township, Montgomery County, Pennsylvania, and described in the ROD and shown in Appendix E attached hereto.

"Successor in Interest and/or Assign" shall mean any person who acquires an interest in the

Property or portion thereof (including but not limited to an ownership or leasehold interest) and who signs an Agreement and Certification of Successor in Interest and/or Assign, the form of which is attached as Appendix F hereto. The term "Successor in Interest and/or Assign" shall include the Successor in Interest's and/or Assign's heirs, corporate successors or assigns, commissioners, officers, directors, employees and agents. Nothing in the Certification of Successor in Interest and/or Assign or this Consent Decree shall prohibit a lessee, sublessee or any person conducting activities at the Property from entering into and signing the Agreement and Certification of Successor in Interest and/or Assign. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the United States. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

"Supervising Contractor" shall mean the principal contractor retained by the Settling Defendants and the UAO Respondents to supervise the implementation of the RD/RA for the entire Site, including the Work under this Consent Decree.

"UAO Respondents" shall mean Beazer East, Inc., Crater Resources, Inc., Each Parcel As Is, Inc., Gulph Mills Golf Club, Inc., Keystone Coke Company, Inc., R-T Option Corporation and Vesper Corporation.

"United States" shall mean the United States of America.

"Waste Material" shall mean (1) any hazardous substance under Section 101(14) of CERCLA, 42 U.S.C. § 9601(14); (2) any pollutant or contaminant under Section 101(33), 42 U.S.C. § 9601(33); (3) any "solid waste" under Section 1004(27) of RCRA, 42 U.S.C. § 6903(27); and (4) any "hazardous substance" or "contaminant" under Section 103 of the

Pennsylvania Solid Waste Management Act, 35 P.S. § 6018.103, but shall not mean waste generated by the operation of commercial office buildings at the Site, provided that, such waste from commercial office buildings is managed in accordance with all applicable Federal, State and local laws and regulations.

“Work” shall mean all activities Settling Defendants are required to perform under this Consent Decree, except those required by Section XXV (Retention of Records), and shall be limited to the soil remedy identified in Section XII (Selected Remedy and Performance Standards) of the ROD for: 1) the entirety of Quarry No. 4, including that portion of the Quarry owned by the Gulph Mills Golf Course; and 2) any portion of the WAL Pipeline located on the Property. Such Work shall also include the performance of the soil remedy on the Property to the extent that hazardous substances from the WAL Pipeline have come to be located there.

“Work”, for the purpose of this Consent Decree, shall not include the selected and/or contingent ground water remedies selected in the ROD for the Site or any other groundwater remedy at the Site. Work shall also include complying with the requirements of this Consent Decree, with the exception of the obligations set forth in Section XXV (Retention of Records), coordinating the Settling Defendants’ activities with EPA and the UAO Respondents, and performing the Settling Defendants’ obligations in a manner that will not interfere with the work to be performed by the UAO Respondents pursuant to Section VI. of the RD/RA UAO.

V. GENERAL PROVISIONS

5. Objectives of the Parties

The objectives of the Parties in entering into this Consent Decree are to protect public health

or welfare or the environment at the Site by the design and implementation of response actions at the Property and Quarry 4 by the Settling Defendants, and to resolve the claims of Plaintiff against Settling Defendants at the Site as provided in this Consent Decree and to provide a mechanism to protect Successors in Interest and/or Assigns from potential liability under CERCLA that could otherwise result from acquiring an interest in the Property or portion thereof so as to facilitate the return of the Property to productive use.

6. Commitments by Settling Defendants

a. Settling Defendants shall finance and perform the Work in accordance with this Consent Decree, the ROD, and all work plans and other plans, standards, specifications, and schedules set forth herein or developed by Settling Defendants and approved by EPA pursuant to this Consent Decree.

b. The obligations of the Settling Defendants to finance and perform the Work and to pay amounts owed the United States under this Consent Decree are joint and several. In the event of the insolvency or other failure of any one or more Settling Defendants to implement the requirements of this Consent Decree, the remaining Settling Defendant shall complete all such requirements.

c. In the event that any of the Settling Defendants files for bankruptcy or is placed involuntarily in bankruptcy proceedings, such Settling Defendant shall notify the United States within three (3) days of such filing.

7. Compliance With Applicable Law

All activities undertaken by Settling Defendants pursuant to this Consent Decree shall be performed in accordance with the requirements of all applicable federal and state laws and

regulations. Settling Defendants must also comply with all applicable or relevant and appropriate requirements of all Federal and state environmental laws as set forth in the ROD. The activities conducted pursuant to this Consent Decree, if approved by EPA, shall be considered to be consistent with the NCP.

8. Permits

a. As provided in Section 121(e) of CERCLA and Section 300.400(e) of the NCP, no permit shall be required for any portion of the Work conducted entirely on-Site (i.e., within the areal extent of contamination or in very close proximity to the contamination and necessary for implementation of the Work). Where any portion of the Work that is not on-Site requires a Federal or state permit or approval, Settling Defendants shall submit timely and complete applications and take all other actions necessary to obtain all such permits or approvals.

b. The Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree for any delay in the performance of the Work resulting from a failure to obtain, or a delay in obtaining, any permit required for the Work.

c. This Consent Decree is not, and shall not be construed to be, a permit issued pursuant to any Federal or state statute or regulation.

9. Notice of Obligations to Successors-in-Title

a. With respect to the Property, within fifteen (15) days after the entry of this Consent Decree, the Owner Settling Defendant shall submit to EPA for review and approval a notice to be filed with the Recorder of Deeds Office, Montgomery County, Commonwealth of Pennsylvania, which shall provide notice to all successors-in-title that the Property is part of the Site, that EPA selected a remedy for the Site on September 27, 2000, and that potentially

responsible parties have entered into a Consent Decree requiring partial implementation of the remedy. Such notice(s) shall identify the United States District Court in which the Consent Decree was filed, the name and civil action number of this case, and the date the Consent Decree was entered by the Court. The Owner Settling Defendant shall record the notice(s) within ten (10) days of EPA's approval of the notice(s) and shall provide EPA with a certified copy of the recorded notice(s) within ten (10) days of recording such notice(s). Following the Owner Settling Defendant's filing of the EPA-approved Notice, discussed above, Owner Settling Defendant may remove the notices previously filed with the Recorder of Deeds under the RD/RA UAO. The requirements of Paragraph 9.a. shall not apply to the parcels of land, within the Property, that are (1) defined above as "Pink North" and "Yellow North" or (2) remediated to levels which EPA determines meet risk-based cleanup criteria permitting unlimited use and unrestricted exposure ("UU/UE"). EPA reserves its right to require the Settling Defendants to comply with the requirements of Paragraph 9.a in the event that hazardous substances are subsequently found at Pink North or Yellow North, respectively, at levels which EPA determines do not meet the Performance Standards set forth in the ROD and as defined herein and/or any risk-based cleanup criteria permitting UU/UE.

b. At least thirty (30) days prior to the conveyance of any interest in the Property, including, but not limited to, fee interests, easements, leasehold interests, and mortgage interests, the Owner Settling Defendant conveying the interest shall give the grantee written notice of (i) this Consent Decree, (ii) any instrument by which an interest in real property has been conveyed that confers a right of access to the Site (hereinafter referred to as "access easements") pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, and (iii) any instrument

by which an interest in real property has been conveyed that confers a right to enforce restrictions on the use of such property (hereinafter referred to as "restrictive covenants") pursuant to Section IX (Access and Institutional Controls) of this Consent Decree. At least thirty (30) days prior to such conveyance, the Owner Settling Defendant conveying the interest shall also give written notice to EPA and the State of the proposed conveyance, which notice shall include the name and address of the grantee and the date on which notice of the Consent Decree, access easements, and/or restrictive covenants was given to the grantee. The requirements of Paragraph 9.b. shall not apply to the parcels of land, within the Property, that are (1) defined above as "Pink North" and "Yellow North" or (2) remediated to levels which EPA determines meet risk-based cleanup criteria permitting UU/UE. EPA reserves its right to require the Settling Defendants to comply with the requirements of Paragraph 9.b in the event that hazardous substances are subsequently found at Pink North or Yellow North, respectively, at levels which EPA determines do not meet the Performance Standards set forth in the ROD and as defined herein and/or any risk-based cleanup criteria permitting UU/UE.

c. In the event of any such conveyance, the Owner Settling Defendant's obligations under this Consent Decree, including, but not limited to, its obligation to provide or secure access and institutional controls, as well as to abide by such institutional controls, pursuant to Section IX (Access and Institutional Controls) of this Consent Decree, shall continue to be met by the Owner Settling Defendant. In no event shall the conveyance release or otherwise affect the liability of the Owner Settling Defendant to comply with all provisions of this Consent Decree, absent the prior written consent of the United States. If the United States approves, the grantee may perform some or all of the Work under this Consent Decree.

VI. PERFORMANCE OF THE WORK BY SETTLING DEFENDANTS

10. Selection of Contractors.

a. Supervising Contractor.

i. All aspects of the Work to be performed by Settling Defendants pursuant to Sections VI (Performance of the Work by Settling Defendants), VII (Remedy Review), VIII (Quality Assurance, Sampling, and Data Analysis), and XV (Emergency Response) of this Consent Decree shall be under the supervision of the Supervising Contractor, the selection of which shall be subject to acceptance or disapproval by EPA after a reasonable opportunity for review and comment by the State. Settling Defendants have proposed and EPA has accepted Advanced Geoservices Corporation ("AGC") as their Supervising Contractor in this matter. In the event that AGC is to be replaced, Settling Defendants shall, within five (5) days of the termination of AGC, notify EPA in writing of the name, title, and qualifications of any contractor proposed to be the Supervising Contractor. With respect to any contractor proposed to be Supervising Contractor, Settling Defendants shall demonstrate that the proposed contractor has a quality system that complies with ANSI/ASQC E4-1994, "Specifications and Guidelines for Quality Systems for Environmental Data Collection and Environmental Technology Programs," (American National Standard, January 5, 1995), by submitting a copy of the proposed contractor's Quality Management Plan (QMP). The QMP should be prepared in accordance with EPA Requirements for Quality Management Plans (QA/R-2)(EPA/240/B-01/002, March 2001) or equivalent documentation as determined by EPA. EPA will issue a notice of disapproval or acceptance of the selection of such Supervising Contractor. If at any time thereafter, Settling

Defendants propose to change a Supervising Contractor, Settling Defendants shall give such notice to EPA and must obtain a notice of acceptance of such change from EPA, after a reasonable opportunity for review and comment by the State, before the new Supervising Contractor performs, directs, or supervises any Work under this Consent Decree.

ii. If EPA disapproves the selection of a proposed Supervising Contractor, EPA will notify Settling Defendants in writing. Settling Defendants shall submit to EPA a list of at least three contractors, including the qualifications of each contractor, that would be acceptable to them within fourteen (14) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) whose selection it would accept. Settling Defendants may select any contractor from that list and shall notify EPA of the name of the contractor selected within twenty-one (21) days of EPA's written notice.

iii. If EPA fails to provide written notice of its acceptance or disapproval as provided in this Paragraph and this failure prevents the Settling Defendants from meeting one or more deadlines in a plan approved by the EPA pursuant to this Consent Decree, Settling Defendants may seek relief under the provisions of Section XVIII (Force Majeure) of this Consent Decree.

iv. Liberty shall also be responsible to coordinate its activities with EPA and the UAO Respondents, and to perform its obligations in a manner that will not interfere with the performance of the UAO Respondents. Liberty shall provide a copy of all documents, including plans, reports, and other items pertaining to the Work required to be submitted by Liberty to EPA for approval pursuant to this Consent Decree, to the UAO Respondents.

b. Remedial Design Contractor(s).

i. For purposes of this Paragraph 10.b. (Remedial Design Contractor(s)),

10.c. (Remedial Action Contractor(s)) and 10.e. (Other Contractors and Subcontractors), Settling Defendants have proposed and EPA has approved Penn E&R as Settling Defendants' Remedial Design and Remedial Action Contractor, as well as the following contractors: CompuChem Laboratory and Talon Drilling Company. For purposes of this Paragraph 10.b., 10.c. and 10.e., the term "contractors" shall be deemed to include contractors and subcontractors. In the event that Settling Defendants want to select a new Remedial Design Contractor, Settling Defendants shall: (1) notify EPA and the State in writing of the name, title, and qualifications of all contractor(s) and subcontractor(s) to be used in carrying out all Remedial Design activities required by this Consent Decree; and (2) identify the personnel that will be used during construction to ensure that the Work is performed in accordance with the approved Remedial Design submittal(s).

ii. EPA will notify Settling Defendants in writing of its acceptance or disapproval of the selection of the Remedial Design contractor(s), including subcontractor(s). If EPA disapproves of the selection of the Settling Defendants' proposed Remedial Design contractor(s), the Settling Defendants shall submit to EPA the names, titles, and qualifications of at least three (3) contractors that would be acceptable to the Settling Defendants, within fourteen (14) days of receipt of EPA's disapproval. Except as provided below, EPA will provide written notice of the name of the contractor(s) whose selection EPA accepts. The Settling Defendants may select any contractor(s) from that list and shall notify EPA and the State in writing of the name(s) of the contractor(s) selected within fourteen (14) days of EPA's designation. The Settling Defendants shall notify EPA and the State of the date the Settling Defendants enter into an agreement or contract with such contractor(s) to perform the Work for which the selection of such contractor(s) were accepted by EPA. In the event EPA does not accept the selection of any

of the contractors proposed in the Settling Defendants' list, EPA may direct the Settling Defendants to submit to EPA the names and qualifications of at least three (3) additional contractors whose selection would be acceptable to the Settling Defendants within fourteen (14) days of receipt of EPA's disapproval.

iii. If at any time during the pendency of this Consent Decree a decision is made by the Settling Defendants to retain an additional or substitute Remedial Design Contractor or subcontractor, the Settling Defendants shall give written notification to EPA and shall obtain acceptance from EPA in accordance with the procedures described in Paragraph 10.b.i. and ii., above, before the new contractor(s) or subcontractor(s) perform(s), direct(s), or supervise(s) any Work pursuant to this Consent Decree.

c. Remedial Action Contractor(s).

i. Within thirty (30) days after EPA approves the Remedial Action Work Plan submitted by the Settling Defendants pursuant to Paragraph 11 of this Consent Decree, and prior to the commencement of any Work thereunder, the Settling Defendants shall notify EPA in writing of the name(s), title(s) and qualifications of all contractor(s) and subcontractor(s) and the personnel of such contractor(s) and subcontractor(s) proposed to be used in carrying out Work required by such approved Remedial Action Work Plan. For purposes of this Paragraph 10.c., the term "contractors" shall be deemed to include contractors and subcontractors.

ii. EPA will accept or disapprove the selection of the Remedial Action contractor(s) proposed by the Settling Defendants in accordance with the procedures described for the acceptance or disapproval of Remedial Design contractor(s) and subcontractor(s) in Paragraph 10.b.i and ii, above.

iii. If at any time during the pendency of this Consent Decree a decision is

made by the Settling Defendants to retain an additional or substitute Remedial Action contractor or subcontractor, the Settling Defendants shall give written notification to EPA and shall obtain acceptance of the selection from EPA in accordance with the procedures described in Paragraph 10.b.i and 10.b.ii., above, before the new contractor(s) perform(s), direct(s), or supervise(s) any Work pursuant to this Consent Decree.

d. EPA retains the right to disapprove at any time the selection of contractor(s), including subcontractor(s); supervisory personnel; or other persons retained to conduct any of the Work required by this Consent Decree. In such event, the Respondents shall propose replacements in accordance with the requirements of this Section VI.

e. Other Contractors and Subcontractors.

i. The Settling Defendants shall submit to EPA for acceptance by EPA the names and qualifications of any additional contractors and subcontractors they propose to use to satisfy any requirement of this Consent Decree before such contractor or subcontractor performs any Work. In the event EPA disapproves any proposed contractor or subcontractor, Settling Defendants shall submit to EPA a list of at least three contractors or subcontractors, including the qualifications of each, that would be acceptable to them within ten (10) days of receipt of EPA's notice. EPA will provide written notice of the names of any contractor(s) or subcontractor(s) whose selection it would accept. Settling Defendants may select any contractor or subcontractor from that list and shall notify EPA of the name of the contractor or subcontractor selected within five (5) days of EPA's written notice.

11. Remedial Design/Remedial Action.

a. Quarry 4.

Settling Defendants shall submit to EPA a work plan for the design of the Remedial Action

at the Site for which Settling Defendants are responsible ("Remedial Design Work Plan" or "RD Work Plan"). The RD Work Plan shall be prepared by the Remedial Design Contractor, responsible for completion of the Remedial Design, except to the extent such persons have been disapproved by EPA. The Remedial Design Work Plan shall provide for: the performance of a demonstration project designed to determine whether the "multimedia cap consisting of a series of low-permeability clays, geotextile liners, sand drainage layers... constructed in accordance with the Commonwealth's Residual Waste Management Regulations for final cover of Class I residual waste landfills, set forth at 25 Pa. Code Sections 288.234 and 288.236-237" selected in the ROD, is not necessary to prevent unacceptable leaching of contaminants from the soils and sediment in and at Quarry 4 into the groundwater at the Site, as measured by the analytical methods contained in the Remedial Design Work Plan approved by EPA (the "Demonstration Project").

If EPA determines, in its sole unreviewable discretion, that the Demonstration Project establishes that a "multimedia cap consisting of a series of low-permeability clays, geotextile liners, sand drainage layers . . . constructed in accordance with the Commonwealth's Residual Waste Management Regulations for final cover of Class I residual waste landfills, set forth at 25 Pa. Code Sections 288.234 and 288.236-237" selected in the ROD (the "Cap") is not necessary to prevent unacceptable leaching of contaminants from the soils and sediment in and at Quarry 4 into the groundwater at the Site, then EPA will consider in accordance with applicable law and regulation, alternative remedies to the Cap for Quarry 4 to achieve Performance Standards and requirements set forth in the ROD and this Consent Decree to address hazardous substances in the surface and subsurface soils. Any alternative remedy selected by EPA for Quarry 4 in an ESD or ROD Amendment necessitated by the Demonstration Project shall be implemented by

Liberty in accordance with the submittal of plans and schedules required under this Paragraph 11.

If EPA determines, in its sole unreviewable discretion, that the Demonstration Project establishes that the Cap is necessary to prevent unacceptable leaching of contaminants from the soils and sediment in and at Quarry 4 into the groundwater at the Site, Liberty shall design and construct the Cap set forth in the ROD for achievement of the Performance Standards and requirements set forth in the ROD and this Consent Decree in accordance with the submittal of plans and schedules required under this Paragraph 11.

b. Pipeline.

Liberty and the U.S. Environmental Protection Agency have executed a Second Administrative Settlement Agreement and Order on Consent For Removal Action, EPA Docket No. CERC-03-2005-0365DC, which requires Liberty to complete the WAL Pipeline investigation and removal on 3000 Horizon Drive. In addition to the implementation of the aforementioned Pipeline investigation and removal, Liberty shall cooperate with the UAO Respondents, in their development and implementation of a comprehensive and unified work plan for the investigation of the WAL Pipeline and/or Pipeline related hazardous substances at the Site. In addition, to the extent that WAL Pipeline and/or Pipeline related hazardous substances are found on the Property, Liberty shall perform the remediation of the WAL Pipeline and/or Pipeline related hazardous substances on the Property.

c. Remedial Design Work Plan.

Upon its approval by EPA, the Remedial Design Work Plan shall be incorporated into and become enforceable under this Consent Decree. The Settling Defendants shall also submit to EPA and the State, at the time the Remedial Design Work plan is submitted, a Health and Safety

Plan ("HASP") for field design activities which conforms to the applicable Occupational Safety and Health Administration and EPA requirements including, but not limited to, 29 C.F.R. § 1910.120.

Settling Defendants' Remedial Design Work Plan and HASP for the Demonstration Project has been approved by EPA.

If any additional Remedial Design Work Plans are required under this Section VI. of the Consent Decree, such Remedial Design Work Plan(s) shall include plans, schedules, and methodologies for implementation of all remedial design and pre-design tasks and shall include, at a minimum:

(1) a Preliminary Design for the remedy, including plans and schedules for the preparation and submission of a Preliminary Design Submittal (the preliminary design begins with the initial design and ends with the completion of approximately 30% of the design effort) containing, at a minimum:

- a. a Design Criteria Report, including:
 1. project description;
 2. design requirements and provisions;
 3. preliminary process flow diagrams;
 4. operation & maintenance requirements;
- b. a Basis of Design Report, including:
 1. justification of design assumptions;
 2. a project delivery strategy;
 3. remedial action permits plan for off-site permits;
 4. preliminary easement/access requirements;

- c. Preliminary Drawings and Specifications, including:
 - 1. outline of general specifications;
 - 2. preliminary schematics and drawings;
 - 3. chemical and geotechnical data (including data from pre-design activities);
- d. a value engineering screen; and
- e. preliminary Remedial Action schedule.

(2) a Pre-Final Design for the remedy including plans and schedules for the preparation and submission of a pre-final design submittal which shall be submitted at approximately 90% of the design effort and shall address all of EPA's comments to the preliminary design, and, at a minimum, additionally include:

- a. a revised Design Criteria Report, if necessary;
- b. a revised Basis of Design Report, if necessary;
- c. any value engineering study results;
- d. a preliminary Remedial Action waste management plan;
- e. a preliminary Remedial Action Sampling and Analysis Plan containing:
 - i. a Field Sampling Plan; and,
 - ii. a Quality Assurance Project Plan ("QAPP");
- f. a preliminary Operation & Maintenance Plan;
- g. a preliminary Construction Quality Assurance Plan ("CQAP")
(the CQAP, which shall detail the approach to quality assurance during construction activities at the Site, shall

specify a quality assurance official ("QA Official"), independent of the Supervising Contractor, to conduct a quality assurance program during the construction phase of the project);

- h. a preliminary Remedial Action decontamination plan;
- i. a draft final Remedial Action schedule;
- j. a draft final Remedial Action contingency plan; and
- k. a draft final Remedial Action HASP for EPA acceptance.

(3) a Final Design for the remedy including plans and schedules for the preparation and submission of a final design submittal which shall be submitted at 100% of the design effort and shall address all of EPA's comments to the pre-final design, and, at a minimum, additionally include:

- a. a final Remedial Action schedule;
- b. a final Remedial Action contingency plan;
- c. a final Remedial Action HASP for EPA acceptance;
- d. a final Remedial Action waste management plan;
- e. a preliminary Remedial Action decontamination plan and a schedule for the submission of the final Remedial Action decontamination plan;
- f. a final Design Criteria Report;
- g. a final Remedial Action Sampling and Analysis Plan (directed at measuring progress towards meeting the Performance Standards as set forth in the ROD and defined herein);

- h. a final Basis of Design Report;
 - i. final Drawings and Specifications;
 - j. a revised Operation & Maintenance Plan and a schedule for submission of the final Operation & Maintenance Plan;
 - k. a final Construction Quality Assurance Plan;
 - l. a final Remedial Action decontamination plan; and
 - m. a final project delivery strategy.
- (4) a Report of the Findings of any pre-design sampling;
- (5) a Property/Quarry 4 Monitoring Plan;
- (6) a Design Sampling and Analysis Plan, which shall include a Field Sampling Plan and a Quality Assurance Project Plan;
- (7) a Property/Quarry 4 Health and Safety Plan for design activities;
- (8) a Contingency Plan;
- (9) a Construction Quality Assurance Plan ("CQAP");
- (10) a plan for gathering additional data or information, or performing additional studies;
- (11) other appropriate components including a Permitting Plan and an Institutional Controls Plan; a Property/Quarry 4 Management Plan (At a minimum, the Institutional Controls Plan shall include the requirements of this Consent Decree set forth in Section IX (Access and Institutional Controls) and Paragraph 9 (Notice of Obligations to Successors-in-Title)); and
- (12) a Remedial Design Schedule.
- c. Upon approval of the Remedial Design Work Plan by EPA, after a reasonable

opportunity for review and comment by the State, and submittal of the Health and Safety Plan for all field activities to EPA and the State, Settling Defendants shall implement the Remedial Design Work Plan in accordance with the schedules and methodologies contained therein. The Settling Defendants shall submit to EPA all plans, submittals, and other deliverables required under the approved Remedial Design Work Plan in accordance with the approved schedule therein for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA, Settling Defendants shall not commence further Remedial Design field activities at the Property/Quarry 4 prior to approval of the Remedial Design Work Plan.

d. Upon approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all components of the final design submittal, the final design submittal shall serve as the Remedial Action Work Plan and shall be enforceable under this Consent Decree. The Settling Defendants shall implement the activities required under the Remedial Action Work Plan in accordance with the schedules and methodologies contained therein.

e. The Settling Defendants shall submit all plans, submittals, or other deliverables required under the Remedial Action Work Plan in accordance with the approved schedule for review and approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Unless otherwise directed by EPA or required under the Remedial Design Work Plan, the Settling Defendants shall not commence physical activities at the Property/Quarry 4 prior to the date for commencement set forth in the approved schedule in the Remedial Action Work Plan.

12. Resident Engineer Following EPA approval, approval with conditions, or modification by EPA, as provided in Section XI (EPA Approval of Plans and Other Submissions), of all

components of the final design submittal, and prior to commencement of any on-Site Work under the Remedial Action Work Plan, the Settling Defendants shall submit to EPA the name and qualifications of a Resident Engineer to be present at the Property/Quarry 4 during construction to ensure that the Work is performed in accordance with the approved Remedial Action Work Plan. The Resident Engineer shall be familiar with all aspects of the Remedial Design approved by EPA. EPA retains the right to disapprove the use of any Resident Engineer proposed by Settling Defendants. In the event EPA disapproves the use of any proposed Resident Engineer, Settling Defendants shall submit to EPA a list of at least three replacements, including the qualifications of each, who would be acceptable to them within five (5) days of receipt of EPA's notice. EPA will provide written notice of the names of any replacements whose use it would accept. Settling Defendants may select any replacement from the EPA notice and shall notify EPA of the name of the replacement selected within three (3) days of EPA's written notice. Settling Defendants shall ensure that the Resident Engineer performs on-Site inspections as necessary to ensure compliance with the approved Remedial Action Work Plan and that the results of such inspections are promptly provided to Settling Defendants, EPA, and the State. The Resident Engineer may act as the QA Official.

13. The Settling Defendants shall continue to implement the Remedial Action and O & M at the Property until the Performance Standards as set forth in the ROD and as defined herein are achieved and for so long thereafter as is otherwise required under this Consent Decree.

14. Modification of the Work

a. If EPA determines that modification of the Work is necessary to achieve and maintain the Performance Standards or to carry out and maintain the effectiveness of the remedy set forth in the ROD and required to be implemented by Liberty pursuant to this Consent Decree,

EPA may (1) require that such modification be incorporated into the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or any other plan relating to such Work, and/or (2) require that Settling Defendants submit a plan for EPA approval which incorporates such modification to the Work and implement such approved plan. Provided, however, that a modification may be required pursuant to this Paragraph only to the extent that it is consistent with the scope of the remedy selected in the ROD, with the exclusion of the selected and/or contingent groundwater remedy or any other groundwater remedy at the Site. This Paragraph 14 does not apply to the EPA decisions and implementation thereof described in Paragraph 11.a.

b. For the purposes of this Paragraph 14 and Paragraphs 50 and 51 only, the "scope of the remedy selected in the ROD", for which Liberty is obligated to implement pursuant to this Consent Decree, means:

the soil remediation tasks at the Property employing a technology or combination of technologies discussed in Section XII [Selected Remedy and Performance Standards] of the ROD to achieve and maintain the objectives described in the ROD, which include: the construction of a Cap, described above, over Quarry 4, to the extent that it is necessary to prevent unacceptable leaching of contaminants from the soil and sediment in and at Quarry 4 into the groundwater at the Site, as determined by EPA in accordance with Paragraph 11; to address other soil areas at the Property to the extent required by the ROD; and implementation of institutional controls as set forth in the ROD and defined herein.

c. If Settling Defendants object to any modification determined by EPA to be necessary pursuant to this Paragraph, they may seek dispute resolution pursuant to Section XIX (Dispute Resolution), Paragraph 68 (Record Review). The Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or related work plans shall be modified in accordance with final resolution of the dispute.

d. Settling Defendants shall implement any work required by any modifications incorporated in the Remedial Design Work Plan, Remedial Action Work Plan, Operation and Maintenance Plan, and/or in work plans developed in accordance with this Paragraph.

e. Nothing in this Paragraph shall be construed to limit EPA's authority to require performance of further response actions as otherwise provided in this Consent Decree.

15. Settling Defendants acknowledge and agree that nothing in this Consent Decree or the Remedial Design or Remedial Action Work Plans constitutes a warranty or representation of any kind by Plaintiff that compliance with the work requirements set forth in the Work Plans will achieve the Performance Standards as set forth in the ROD and as defined herein.

16. Settling Defendants shall, prior to any off-Site shipment of Waste Material from the Site by Settling Defendants to an out-of-state waste management facility, provide written notification to the appropriate state environmental official in the receiving facility's state and to the EPA Project Coordinator of such shipment of Waste Material. However, this notification requirement shall not apply to any off-Site shipments when the total volume of all such shipments will not exceed ten (10) cubic yards.

a. The Settling Defendants shall include in the written notification the following information, where available:

1. the name and location of the facility to which the Waste Material is to be shipped;
2. the type and quantity of the Waste Material to be shipped;
3. the expected schedule for the shipment of the Waste Material; and
4. the method of transportation.

The Settling Defendants shall notify the state in which the planned receiving facility is located of

major changes in the shipment plan, such as a decision to ship the Waste Material to another facility within the same state, or to a facility in another state.

b. The identity of the receiving facility and state will be determined by the Settling Defendants following the award of the contract for Remedial Action construction. The Settling Defendants shall provide the information required by Paragraph 16.a as soon as practicable after the award of the contract but in no case less than seven (7) days before the Waste Material is actually shipped.

c. The Settling Defendants shall transfer Waste Material only to a receiving facility that is in compliance with Section 121(d)(3) of CERCLA, 42 U.S.C. § 9621(d)(3), and 40 C.F.R. § 300.440.

VII. REMEDY REVIEW

17. Periodic Review. Settling Defendants shall conduct any studies and investigations as requested by EPA, in order to permit EPA to conduct reviews of whether the Remedial Action is protective of human health and the environment, at least every five (5) years as required by Section 121(c) of CERCLA and any applicable regulations.

18. EPA Selection of Further Response Actions. If EPA determines, at any time, that the Remedial Action is not protective of human health and the environment, EPA may select further response actions for the Site in accordance with the requirements of CERCLA and the NCP.

19. Opportunity To Comment. Settling Defendants and, if required by Sections 113(k)(2) or 117 of CERCLA, the public, will be provided with an opportunity to comment on any further response actions proposed by EPA as a result of the review conducted pursuant to Section 121(c) of CERCLA and to submit written comments for the record during the comment period.

20. Reserved.

21. Reserved.

VIII. QUALITY ASSURANCE, SAMPLING, AND DATA ANALYSIS

22. While conducting all sample collection and analysis activities required by this Consent Decree, the Settling Defendants shall implement quality assurance, quality control, and chain of custody procedures in accordance with "EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5)" (EPA 240 B-01 003, March 2001); "EPA NEIC Policies and Procedures Manual," (May 1986) (EPA 330/978-001-R); National Functional Guidelines for Inorganic Data Review (EPA 540/R-94/013) and Modifications to the National Functional Guidelines for Inorganic Data Review (EPA Region III: April 1993); National Functional Guidelines for Organic Data Review (EPA 540/R-94/012) and Modifications to the National Functional Guidelines for Organic Data Review (EPA Region III: September 1994); "Region III Innovative Approaches to Data Validation," (EPA Region III: September 1994); "Data Quality Objectives Process for Superfund," (EPA 540/R-93/071: September 1994); and subsequent amendments to such guidelines upon notification by EPA to Settling Defendants of such amendment. Amended guidelines shall apply only to procedures conducted after such notification. Prior to the commencement of any monitoring project under this Consent Decree, Settling Defendants shall submit to EPA for approval, after a reasonable opportunity for review and comment by the State, a Quality Assurance Project Plan ("QAPP") for the Work that is consistent with the NCP and the guidance documents cited above. If relevant to the proceeding, the Parties agree that validated sampling data generated in accordance with the QAPP(s) and reviewed and approved by EPA shall be admissible as evidence, without objection, in any proceeding under this Decree. Settling

Defendants shall ensure that EPA personnel and its authorized representatives are allowed access at reasonable times to all laboratories utilized by Settling Defendants in implementing this Consent Decree. In addition, Settling Defendants shall ensure that such laboratories shall analyze all samples submitted by EPA pursuant to the QAPP for quality assurance monitoring. Settling Defendants shall ensure that the laboratories they utilize for the analysis of samples taken pursuant to this Decree perform all analyses according to accepted EPA methods. Settling Defendants shall submit to EPA the selected laboratory's(ies) Quality Assurance Program Plan and their qualifications, which shall include, at a minimum, previous certifications, Performance Evaluation (PE) results, equipment lists and personnel resumes. Settling Defendants shall ensure that all field methodologies utilized in collecting samples for subsequent analysis pursuant to this Decree will be conducted in accordance with the procedures set forth in the QAPP approved by EPA. At the request of EPA, Settling Defendants shall conduct one or more audits of the selected laboratory(ies) to verify analytical capability and compliance with the QAPP. Auditors shall conduct lab audits during the time the laboratory(ies) is analyzing samples collected pursuant to this Consent Decree. The lab audit shall be conducted according to procedures available from the QA Branch. Audit reports shall be submitted to the EPA Project Coordinator within fifteen (15) days of completion of the audit. The Settling Defendants shall report serious deficiencies, including all those which adversely impact data quality, reliability or accuracy, and take action to correct such deficiencies within twenty-four (24) hours of the time the Settling Defendants knew or should have known of the deficiency.

23. Upon request, the Settling Defendants shall allow split or duplicate samples to be taken by EPA or their authorized representatives. Settling Defendants shall notify EPA not less than 30 days in advance of any sample collection activity unless shorter notice is agreed to by EPA.

In addition, EPA shall have the right, upon request, to take any additional samples that EPA deem necessary. Upon request, EPA shall allow the Settling Defendants to take split or duplicate samples of any samples it takes as part of the Plaintiff's oversight of the Settling Defendants' implementation of the Work.

24. Settling Defendants shall submit to EPA five (5) copies of the results of all sampling and/or tests or other data obtained or generated by or on behalf of Settling Defendants with respect to the Site and/or the implementation of this Consent Decree unless EPA agrees otherwise.

25. Notwithstanding any provision of this Consent Decree, the United States hereby retains all of its information gathering and inspection authorities and rights, including enforcement actions related thereto, under CERCLA, RCRA, and any other applicable statutes or regulations.

IX. ACCESS AND INSTITUTIONAL CONTROLS

26. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by any of the Settling Defendants, such Settling Defendants shall:

a. commencing on the date of lodging of this Consent Decree, and thereafter, provide the United States and its representatives, including EPA and its contractors, with access at all reasonable times to the Site, or such other property, for the purpose of conducting any activity related to this Consent Decree including, but not limited to, the following activities:

- i. Performing and Monitoring the Work;
- ii. Verifying any data or information submitted to the United States;
- iii. Conducting investigations relating to contamination at or near the Site;

- iv. Obtaining samples;
 - v. Assessing the need for, planning, or implementing additional response actions at or near the Site;
 - vi. Assessing implementation of quality assurance and quality control practices as defined in the approved Quality Assurance Project Plans;
 - vii. Implementing the Work pursuant to the conditions set forth in Paragraph 87 of this Consent Decree (Work Takeover);
 - viii. Inspecting and copying records, operating logs, contracts, or other documents maintained or generated by Settling Defendants or their agents, consistent with Section XXIV;
 - ix. Assessing Settling Defendants' compliance with this Consent Decree; and
 - x. Determining whether the Site or other property is being used in a manner that is prohibited or restricted, or that may need to be prohibited or restricted, by or pursuant to this Consent Decree;
- b. commencing on the date of lodging of this Consent Decree, and thereafter, refrain from using the Site, or such other property, in any manner that would interfere with, obstruct, or disturb the integrity, performance, support, or supervision of (i) the Work conducted or being conducted pursuant to this Consent Decree; (ii) remedial measures performed, hereunder; or (iii) any additional response measures selected by EPA pursuant to this Consent Decree. In addition, unless (i) required for implementation of the Work under this Consent Decree or any additional response measures selected by EPA pursuant to this Consent Decree, or (ii) otherwise determined to be necessary by EPA, the Settling Defendants shall comply with the following restrictions and requirements:

- i. There shall be no installation or use of new groundwater wells or use of any existing ground water wells other than to implement the remedy at the Site as set forth in the ROD, the RD/RA UAO and/or this Consent Decree;
- ii. The land may not be used for any residential purposes; and
- iii. There shall be no disturbance of the surface of the land by filling, drilling, excavation, removal of topsoil, rocks or minerals, or change in the topography of the land other than to implement the remedy at the Site as set forth in the ROD, the RD/RA UAO and/or this Consent Decree without seeking prior written approval from EPA at least thirty (30) days in advance of the disturbance or such shorter period as is agreed to by EPA, and receiving such approval. The requirements of Paragraph 26.b.ii and iii shall not apply to the parcels of land, within the Property, that are (1) defined above as "Pink North" and "Yellow North", or (2) remediated to levels which EPA determines meet risk-based cleanup criteria permitting UU/UE. EPA reserves its right to require the Settling Defendants to comply with the requirements of Paragraph 26.b ii or iii in the event that hazardous substances are subsequently found at "Pink North", "Yellow North", or other portions of the Property, at levels which EPA determines do not meet risk-based cleanup criteria permitting UU/UE.

c. at EPA's request execute and record in the Recorder of Deeds or other appropriate land records office of Montgomery County, Pennsylvania an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent

Decree, and (ii) grants the right to enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such Settling Defendants shall grant the access rights and the rights to enforce the land/water use restrictions to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, (iii) the other Settling Defendants and their representatives, and/or (iv) other appropriate grantees. Such Settling Defendants shall, within forty-five (45) days after EPA's request, submit to EPA for review and approval with respect to such property:

- (1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the Commonwealth of Pennsylvania; and
- (2) a current title insurance commitment or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds or other appropriate office of Montgomery County, Pennsylvania. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to

EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

27. If the Site, or any other property where access and/or land/water use restrictions are needed to implement this Consent Decree, is owned or controlled by persons other than any of the Settling Defendants or the UAO Respondents, Settling Defendants shall use best efforts to secure from such persons:

a. an agreement to provide access thereto for Settling Defendants, as well as for the United States on behalf of EPA, as well as its representatives (including contractors), for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree;

b. an agreement, enforceable by the Settling Defendants and the United States, to refrain from using the Site, or such other property, in any manner that would interfere with or adversely affect the implementation, integrity, or protectiveness of the remedial measures to be performed pursuant to this Consent Decree. Such restrictions include, but are not limited to those set forth in Paragraph 26.b.; and

c. if EPA so requests, the execution and recordation in the Recorder of Deeds Office or other appropriate land records office of Montgomery County, Commonwealth of Pennsylvania, of an easement, running with the land, that (i) grants a right of access for the purpose of conducting any activity related to this Consent Decree including, but not limited to, those activities listed in Paragraph 26(a) of this Consent Decree, and (ii) grants the right to

enforce the land/water use restrictions listed in Paragraph 26(b) of this Consent Decree, or other restrictions that EPA determines are necessary to implement, ensure non-interference with, or ensure the protectiveness of the remedial measures to be performed pursuant to this Consent Decree. The access rights and/or rights to enforce land/water use restrictions shall be granted to (i) the United States, on behalf of EPA, and its representatives, (ii) the State and its representatives, and (iii) the UAO Respondents other than the Settling Defendants. Within forty-five (45) days of EPA's request, Settling Defendants shall submit to EPA for review and approval with respect to such property:

(1) A draft easement, in substantially the form attached hereto as Appendix G, that is enforceable under the laws of the Commonwealth of Pennsylvania; and

(2) a current title insurance commitment, or some other evidence of title acceptable to EPA, which shows title to the land described in the easement to be free and clear of all prior liens and encumbrances (except when those liens or encumbrances are approved by EPA or when, despite best efforts, Settling Defendants are unable to obtain release or subordination of such prior liens or encumbrances).

Within fifteen (15) days of EPA's approval and acceptance of the easement and the title evidence, such Settling Defendants shall update the title search and, if it is determined that nothing has occurred since the effective date of the commitment to affect the title adversely, record the easement with the Recorder of Deeds or other appropriate office of Montgomery County, Pennsylvania. Within thirty (30) days of recording the easement, such Settling Defendants shall provide EPA with a final title insurance policy, or other final evidence of title acceptable to EPA, and a certified copy of the original recorded easement showing the clerk's recording stamps. If

the easement is to be conveyed to the United States, the easement and title evidence (including final title evidence) shall be prepared in accordance with the U.S. Department of Justice Title Standards 2001, and approval of the sufficiency of title must be obtained as required by 40 U.S.C. § 255.

28. If (a) any access or land/water use restriction agreements required by Paragraphs 27(a) or 27(b) of this Consent Decree are not obtained within forty-five (45) days of EPA's request, (b) any access easements or restrictive easements required by Paragraph 27(c) of this Consent Decree are not submitted to EPA in draft form within forty-five (45) days of EPA's request, or (c) Settling Defendants are unable to obtain an agreement pursuant to Paragraph 26.c.(1) or Paragraph 27.c.(1) from the holder of a prior lien or encumbrance to release or subordinate such lien or encumbrance to the easement being created pursuant to this Consent Decree within forty-five (45) days of the date of EPA's request, Settling Defendants shall promptly notify the United States in writing, and shall include in that notification a summary of the steps that Settling Defendants have taken to attempt to comply with Paragraph 27 of this Consent Decree. The United States may, as it deems appropriate, assist Settling Defendants in obtaining access or land/water use restrictions, either in the form of contractual agreements or in the form of easements running with the land, or in obtaining the release or subordination of a prior lien or encumbrance. Settling Defendants shall reimburse the United States in accordance with the procedures in Section XVI (Payment For Response Costs), for all costs incurred, direct or indirect, by the United States in obtaining such access, land/water use restrictions, and/or the release/subordination of prior liens or encumbrances including, but not limited to, the cost of attorney time and the amount of monetary consideration paid or just compensation.

29. If EPA determines that land/water use restrictions in the form of state or local laws,

regulations, ordinances or other governmental controls are needed to implement the remedy selected in the ROD, ensure the integrity and protectiveness thereof, or ensure non-interference therewith, Settling Defendants shall cooperate with EPA's efforts to secure such governmental controls.

30. Notwithstanding any provision of this Consent Decree, the United States retains all of its access authorities and rights, as well as all of its rights to require land/water use restrictions, including enforcement authorities related thereto, under CERCLA, RCRA, and any other applicable statute or regulations.

X. REPORTING REQUIREMENTS

31. In addition to any other requirement of this Consent Decree, Settling Defendants shall submit to EPA five (5) copies and to the State two (2) copies each of written monthly progress reports that: (a) describe the actions which have been taken toward achieving compliance with this Consent Decree during the previous month; (b) include all results of sampling and tests and all other data received or generated by Settling Defendants or their contractors or agents in the previous month related to the Work, performed pursuant to this Consent Decree; (c) identify all work plans, plans, and other deliverables required by this Consent Decree completed and submitted during the previous month; (d) describe all actions, including, but not limited to, data collection and implementation of work plans for Work under this Consent Decree, which are scheduled for the next month and provide other information relating to the progress of construction, including, but not limited to, critical path diagrams, Gantt charts, and Pert charts; (e) include information regarding percentage of completion of the Work, unresolved delays encountered or anticipated that may affect the future schedule for implementation of the Work,

and a description of efforts made to mitigate those delays or anticipated delays; (f) include any modifications to the work plans or other schedules that Settling Defendants have proposed to EPA or that have been approved by EPA; (g) describe all activities undertaken in support of the Community Relations Plan during the previous month and those to be undertaken in the next month. Settling Defendants shall submit these progress reports to EPA and the State by the tenth day of every month following the lodging of this Consent Decree until EPA notifies the Settling Defendants pursuant to Paragraph 51.b of Section XIV (Certification of Completion). If requested by EPA, Settling Defendants shall also provide briefings for EPA to discuss the progress of the Work.

32. The Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress report for the performance of any activity, including, but not limited to, implementation of work plans, no later than seven (7) days prior to the performance of the activity, unless EPA agrees to a shorter period of notice. Notwithstanding the foregoing, the Settling Defendants shall notify EPA of any change in the schedule described in the monthly progress reports for the performance of data collection no later than thirty (30) days prior to the performance of such activity, unless EPA agrees to a shorter period of notice.

33. Upon the occurrence of any event during performance of the Work that Settling Defendants are required to report pursuant to Section 103 of CERCLA or Section 304 of the Emergency Planning and Community Right-to-Know Act (EPCRA), Settling Defendants shall within twenty-four (24) hours of the onset of such event orally notify the EPA Project Coordinator or the Alternate EPA Project Coordinator (in the event of the unavailability of the EPA Project Coordinator), or, in the event that neither the EPA Project Coordinator or Alternate EPA Project Coordinator is available, the EPA Region III Hotline at (215) 814-3255. These

reporting requirements are in addition to the reporting required by CERCLA Section 103 or EPCRA Section 304.

34. Within ten (10) days of the onset of such an event, Settling Defendants shall furnish to Plaintiff a written report, signed by the Settling Defendants' Remedial Design or Remedial Action Contractor, setting forth the events which occurred and the measures taken, and to be taken, in response thereto. Within thirty (30) days of the conclusion of such an event, Settling Defendants shall submit a report setting forth all actions taken in response thereto.

35. Settling Defendants shall submit to EPA five (5) copies of all plans, reports, and data required by the Remedial Design Work Plan, the Remedial Action Work Plan, or any other approved plans in accordance with the schedules set forth in such plans. Settling Defendants shall simultaneously submit two (2) copies of all such plans, reports, and data to the State. Upon request by EPA, Settling Defendants shall submit in electronic form all portions of any report or other deliverable Settling Defendants are required to submit pursuant to the provisions of this Consent Decree.

36. All reports and other documents submitted by Settling Defendants to EPA (other than the monthly progress reports referred to above) which purport to document Settling Defendants' compliance with the terms of this Consent Decree shall be signed by a Duly Authorized Representative of the Settling Defendants.

XI. EPA APPROVAL OF PLANS AND OTHER SUBMISSIONS

37. After review of any plan, report or other item which is required to be submitted for approval pursuant to this Consent Decree, EPA, after reasonable opportunity for review and comment by the State, shall: (a) approve, in whole or in part, the submission; (b) approve the

submission upon specified conditions; (c) modify the submission to cure the deficiencies; (d) disapprove, in whole or in part, the submission, directing that the Settling Defendants modify the submission; or (e) any combination of the above. However, EPA shall not modify a submission without first providing Settling Defendants at least one notice of deficiency and an opportunity to cure within thirty (30) days, or such other time as specified by EPA in such notice that allows sufficient time for Settling Defendants to coordinate with the Supervising Contractor and the UAO Respondents under Paragraph 10.a.iv., except where to do so would cause serious disruption to the Work, or where previous submission(s) have been disapproved due to material defects and the deficiencies in the submission under consideration indicate to EPA a bad faith lack of effort to submit an acceptable deliverable.

38. In the event of approval, approval upon conditions, or modification by EPA, pursuant to Paragraph 37(a), (b), or (c), Settling Defendants shall proceed to take any action required by the plan, report, or other item, as approved or modified by EPA subject only to their right to invoke the Dispute Resolution procedures set forth in Section XIX (Dispute Resolution) with respect to the modifications or conditions made by EPA. In the event that EPA modifies the submission to cure the deficiencies pursuant to Paragraph 37(c) and the submission has a material defect, EPA retains its right to seek stipulated penalties, as provided in Section XX (Stipulated Penalties).

39. a. Upon receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall, within thirty (30) days, or such other time as specified by EPA in such notice that allows sufficient time for the Settling Defendants to coordinate with the Supervising Contractor and the UAO Respondents under Paragraph 10.a.iv., correct the deficiencies and resubmit the plan, report, or other item for approval. Any stipulated penalties applicable to the submission, as provided in Section XX, shall accrue during the thirty (30)-day period, or

otherwise specified period, but shall not be payable unless the resubmission is disapproved or modified due to a material defect as provided in Paragraphs 40 and 41.

b. Notwithstanding the receipt of a notice of disapproval pursuant to Paragraph 37(d), Settling Defendants shall proceed, at the direction of EPA, to take any action required by any non-deficient portion of the submission. Implementation of any non-deficient portion of a submission shall not relieve Settling Defendants of any liability for stipulated penalties under Section XX (Stipulated Penalties).

40. In the event that a resubmitted plan, report or other item, or portion thereof, is disapproved by EPA, EPA may again require the Settling Defendants to correct the deficiencies, in accordance with the preceding Paragraphs. EPA also retains the right to modify or develop the plan, report or other item. Settling Defendants shall implement any such plan, report, or item as modified or developed by EPA, subject only to their right to invoke the procedures set forth in Section XIX (Dispute Resolution).

41. If upon resubmission, a plan, report, or item is disapproved or modified by EPA due to a material defect, Settling Defendants shall be deemed to have failed to submit such plan, report, or item timely and adequately unless the Settling Defendants invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution) and EPA's action is overturned pursuant to that Section. The provisions of Section XIX (Dispute Resolution) and Section XX (Stipulated Penalties) shall govern the implementation of the Work and accrual and payment of any stipulated penalties during Dispute Resolution. If EPA's disapproval or modification is upheld, stipulated penalties shall accrue for such violation from the date on which the initial submission was originally required, as provided in Section XX.

42. All plans, reports, and other items required to be submitted to EPA under this Consent

Decree shall, upon approval or modification by EPA, be enforceable under this Consent Decree. In the event EPA approves or modifies a portion of a plan, report, or other item required to be submitted to EPA under this Consent Decree, the approved or modified portion shall be enforceable under this Consent Decree.

XII. PROJECT COORDINATORS

43. The EPA Project Coordinator and Alternate Project Coordinator for this Site are:

EPA Project Coordinator:

Joseph McDowell (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3192 (phone)
(215) 814-3002 (telefax)

EPA Alternate Project Coordinator:

Peter Ludzia (3HS21)
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103
(215) 814-3224 (phone)
(215) 814-3002 (telefax)

Settling Defendants have proposed (in coordination with the UAO Respondents,) and EPA has accepted, Leed Environmental, Inc. as the Project Coordinator for the Site. If a Project Coordinator or Alternate Project Coordinator initially designated is changed, the identity of the successor will be given to the other Parties at least five (5) working days before the changes occur, unless impracticable, but in no event later than the actual day the change is made. The

Settling Defendants' Project Coordinator and any Alternate Project Coordinator shall be subject to acceptance or disapproval by EPA and shall have the technical expertise sufficient to adequately oversee all aspects of the Work. The Settling Defendants' Project Coordinator and any Alternate Project Coordinator shall not be an attorney for any of the Settling Defendants in this matter. The Settling Defendants' Project Coordinator and any Alternate Project Coordinator may assign other representatives, including other contractors, to serve as a Site representative for oversight of performance of daily operations during remedial activities.

44. Plaintiff may designate other representatives, including, but not limited to, EPA employees, and federal contractors and consultants, to observe and monitor the progress of any activity undertaken pursuant to this Consent Decree. EPA's Project Coordinator and Alternate Project Coordinator shall have the authority lawfully vested in a Remedial Project Manager (RPM) and an On-Scene Coordinator (OSC) by the National Contingency Plan, 40 C.F.R. Part 300. In addition, EPA's Project Coordinator and Alternate Project Coordinator shall have authority, consistent with the National Contingency Plan, to halt any Work required by this Consent Decree and to take any necessary response action when s/he determines that conditions at the Site constitute an emergency situation or may present an immediate threat to public health or welfare or the environment due to release or threatened release of Waste Material.

45. EPA's Project Coordinator and the Settling Defendants' Project Coordinator will verbally communicate on an as-needed basis.

XIII. ASSURANCE OF ABILITY TO COMPLETE WORK

46. Within thirty (30) days of entry of this Consent Decree, Settling Defendants shall establish and maintain financial security in the amount of \$500,000.00 in one or more of the

following forms:

- (a) A surety bond guaranteeing performance of the Work;
- (b) One or more irrevocable letters of credit;
- (c) A trust fund;
- (d) A guarantee to perform the Work by one or more parent corporations or subsidiaries, or by one or more unrelated corporations that have a substantial business relationship with at least one of the Settling Defendants; or
- (e) A demonstration that one or more of the Settling Defendants satisfy the requirements of 40 C.F.R. § 264.143(f). Such financial security shall be maintained by the Settling Defendants until EPA agrees that the Work has been completed and issues a Certification of Completion in accordance with Paragraph 51.b.

47. If the Settling Defendants seek to demonstrate the ability to complete the Work through a guarantee by a third party pursuant to Paragraph 46(d) of this Consent Decree, Settling Defendants shall demonstrate that the guarantor satisfies the requirements of 40 C.F.R. § 264.143(f). If Settling Defendants seek to demonstrate their ability to complete the Work by means of the financial test or the corporate guarantee pursuant to Paragraph 46(d) or (e), they shall resubmit sworn statements conveying the information required by 40 C.F.R. Part 264.143(f) annually, on the anniversary of the Effective Date. In the event that EPA, after a reasonable opportunity for review and comment by the State, determines at any time that the financial assurances provided pursuant to this Section are inadequate, Settling Defendants shall, within thirty (30) days of receipt of notice of EPA's determination, obtain and present to EPA for approval one of the other forms of financial assurance listed in Paragraph 46 of this Consent Decree. Settling Defendants' inability to demonstrate financial ability to complete the Work shall

not excuse performance of any activities required under this Consent Decree.

48. If Settling Defendants can show that the estimated cost to complete the remaining Work has diminished below the amount set forth in Paragraph 46 above after entry of this Consent Decree, Settling Defendants may, on any anniversary date of the Effective Date of this Consent Decree, or at any other time agreed to by the Parties, reduce the amount of the financial security provided under this Section to the estimated cost of the remaining work to be performed. Settling Defendants shall submit a proposal for such reduction to EPA, in accordance with the requirements of this Section, and may reduce the amount of the security upon approval by EPA. In the event of a dispute, Settling Defendants may reduce the amount of the security in accordance with the final administrative or judicial decision resolving the dispute.

49. Settling Defendants may change the form of financial assurance provided under this Section at any time, upon notice to and approval by EPA, provided that the new form of assurance meets the requirements of this Section. In the event of a dispute, Settling Defendants may change the form of the financial assurance only in accordance with the final administrative or judicial decision resolving the dispute.

XIV. CERTIFICATION OF COMPLETION

50. Completion of the Remedial Action.

a. Within thirty (30) days after Settling Defendants conclude that the Remedial Action to be undertaken by Settling Defendants to implement the portion of the ROD required pursuant to this Consent Decree has been fully performed and the Performance Standards have been attained, Settling Defendants shall schedule and conduct a pre-certification inspection to be

attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Remedial Action has been fully performed and the Performance Standards have been attained, they shall submit a written report requesting certification to EPA for approval, with a copy to the State, pursuant to Section XI (EPA Approval of Plans and Other Submissions) within thirty (30) days of the inspection. In the report, a registered professional engineer and the Settling Defendants' Remedial Action Contractor shall state that the Remedial Action has been completed in full satisfaction of the requirements of this Consent Decree. The written report shall include as-built drawings signed and stamped by a professional engineer. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants' Remedial Action Contractor:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after completion of the pre-certification inspection and receipt and review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that the Remedial Action or any portion thereof has not been completed in accordance with this Consent Decree or that the Performance Standards have not been achieved, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Remedial Action and achieve the Performance Standards. Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy selected in the ROD,” as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent

Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established pursuant to this Paragraph, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent report requesting Certification of Completion and after a reasonable opportunity for review and comment by the State, that the Remedial Action required of Settling Defendants under this Consent Decree has been performed in accordance with this Consent Decree and that the Performance Standards have been achieved, EPA will so certify in writing to Settling Defendants. This certification shall constitute the Certification of Completion of the Remedial Action for purposes of this Consent Decree, including, but not limited to, Section XXI (Covenants Not to Sue by Plaintiff). Certification of Completion of the Remedial Action shall not affect Settling Defendants' other obligations under this Consent Decree.

51. Completion of the Work.

a. Within thirty (30) days after Settling Defendants conclude that all phases of the Work (including O & M at the Property and Quarry 4), have been fully performed, Settling Defendants shall schedule and conduct a pre-certification inspection to be attended by Settling Defendants and EPA. If, after the pre-certification inspection, the Settling Defendants still believe that the Work has been fully performed, Settling Defendants shall submit a written report by a registered professional engineer stating that the Work has been completed in full satisfaction of the requirements of this Consent Decree. The report shall contain the following statement, signed by a Duly Authorized Representative of a Settling Defendant or the Settling Defendants'

Remedial Action Contractor:

“To the best of my knowledge, after thorough investigation, I certify that the information contained in or accompanying this submission is true, accurate and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.”

If, after review of the written report, EPA, after reasonable opportunity for review and comment by the State, determines that any portion of the Work has not been completed in accordance with this Consent Decree, EPA will notify Settling Defendants in writing of the activities that must be undertaken by Settling Defendants pursuant to this Consent Decree to complete the Work.

Provided, however, that EPA may only require Settling Defendants to perform such activities pursuant to this Paragraph to the extent that such activities are consistent with the “scope of the remedy selected in the ROD,” as that term is defined in Paragraph 14.b. EPA will set forth in the notice a schedule for performance of such activities consistent with the Consent Decree or require the Settling Defendants to submit a schedule to EPA for approval pursuant to Section XI (EPA Approval of Plans and Other Submissions). Settling Defendants shall perform all activities described in the notice in accordance with the specifications and schedules established therein, subject to their right to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution).

b. If EPA concludes, based on the initial or any subsequent request for Certification of Completion by Settling Defendants and after a reasonable opportunity for review and comment by the State, that the Work has been performed in accordance with this Consent Decree, EPA will so notify the Settling Defendants in writing.

XV. EMERGENCY RESPONSE

52. In the event of any action or occurrence during the performance of the Work which causes or threatens a release of Waste Material from the Property or Quarry 4 that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, Settling Defendants shall, subject to Paragraph 53, immediately take all appropriate action to prevent, abate, or minimize such release or threat of release, and shall immediately notify the EPA's Project Coordinator, or, if the Project Coordinator is unavailable, EPA's Alternate Project Coordinator. If neither of these persons is available, the Settling Defendants shall notify the EPA Region III Hotline at (215) 814-3255. Settling Defendants shall take such actions in consultation with EPA's Project Coordinator or other available authorized EPA officer and in accordance with all applicable provisions of the Health and Safety Plans, the Contingency Plans, and any other applicable plans or documents developed pursuant to this Consent Decree. In the event that Settling Defendants fail to take appropriate response action as required by this Section, and EPA takes such action instead, Settling Defendants shall reimburse EPA all costs of the response action not inconsistent with the NCP pursuant to Paragraph 54.b. of Section XVI (Payment For Response Costs).

53. Nothing in the preceding Paragraph or in this Consent Decree shall be deemed to limit any authority of the United States to (a) take all appropriate action to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, or (b) direct or order such action, or seek an order from the Court, to protect human health and the environment or to prevent, abate, respond to, or minimize an actual or threatened release of Waste Material on, at, or from the Site, subject to Section XXI (Covenants Not to Sue by Plaintiff).

XVI. PAYMENT FOR RESPONSE COSTS

54. a. Payment of Future Response Costs. Settling Defendants shall pay to EPA's Hazardous Substance Superfund Crater Resources Site-Specific Special Account all Future Response Costs, not inconsistent with the National Contingency Plan. Except as provided in Paragraph 54.b., the United States will send Settling Defendants a bill, on an annual basis, requiring payment that includes a certified cost summary. Settling Defendants shall make all payments within thirty (30) days of Settling Defendants' receipt of each bill requiring payment, except as otherwise provided in Paragraph 55. The Settling Defendants shall make all payments required by this Paragraph either by FedWire Electronic Funds Transfer ("EFT") or in the form of a certified or cashier's check or checks. If Settling Defendants elect to make payment by EFT, such payment shall be made to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number ____, EPA Site/Spill ID No. 038B, and DOJ Case Number 90-11-2-1283. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

If Settling Defendants elect to make payment in the form of a certified or cashier's check or checks, such check(s) shall be made payable to "EPA Hazardous Substance Superfund" and

referencing the EPA Region Site/Spill ID No. 038B, the DOJ Case Number 90-11-2-1283, and the name and address of the party making the payment. The Settling Defendants shall send the check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

b. With respect to Future Response Costs related to actions taken pursuant to Section XV. (Emergency Response), in the event that the EPA requires the Settling Defendants to perform Emergency Response actions pursuant to Paragraph 52, above, and Settling Defendants refuse to do so, or do not do so to EPA's satisfaction, and EPA elects to perform such Emergency Response actions itself, Settling Defendants shall within 30 days of Settling Defendants' receipt of EPA's demand for payment, make payment for all Emergency Response Costs. Payment shall be made either by FedWire Electronic Funds Transfer ("EFT") or in the form of a certified or cashier's check or checks. If Settling Defendants elect to make payment by EFT, such payment shall be made to the U.S. Department of Justice account in accordance with current EFT procedures, referencing USAO File Number _____, EPA Site/Spill ID No. 038B, and DOJ Case Number 90-11-2-1283. Payment shall be made in accordance with instructions provided to the Settling Defendants by the Financial Litigation Unit of the United States Attorney's Office for the Eastern District of Pennsylvania following lodging of the Consent Decree. Any payments received by the Department of Justice after 4:00 p.m. (Eastern Time) will be credited on the next business day. Settling Defendants shall send notice that such payment has been made to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk

(3RC00), United States Environmental Protection Agency, 1650 Arch Street, Philadelphia, PA 19103.

If Settling Defendants elect to make payment in the form of a certified or cashier's check or checks, such check(s) shall be made payable to "EPA Hazardous Substance Superfund" and referencing the EPA Region Site/Spill ID No. 038B, the DOJ Case Number 90-11-2-1283, and the name and address of the party making the payment. The Settling Defendants shall send the check(s) to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, and shall send copies of the check(s) to the United States as specified in Section XXVI (Notices and Submissions) and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

55. Settling Defendants may contest payment of any Future Response Costs under Paragraph 54 if they determine that the United States has made an accounting error or if they allege that a cost item that is included represents costs that are inconsistent with the NCP or this Consent Decree. Such objection shall be made in writing within thirty (30) days of receipt of the bill and must be sent to the United States pursuant to Section XXVI (Notices and Submissions). Any such objection shall specifically identify the contested Future Response Costs and the basis for objection. In the event of an objection, the Settling Defendants shall within the thirty (30) day period for objection pay all uncontested Future Response Costs to the United States in the manner described in Paragraph 54. Simultaneously, the Settling Defendants shall establish an interest-bearing escrow account in a federally-insured bank duly chartered in the Commonwealth of Pennsylvania and remit to that escrow account funds equivalent to the amount of the contested Future Response Costs. The Settling Defendants shall send to the United States, as provided in

Section XXVI (Notices and Submissions), a copy of the transmittal letter and check paying the uncontested Future Response Costs, and a copy of the correspondence that establishes and funds the escrow account, including, but not limited to, information containing the identity of the bank and bank account under which the escrow account is established as well as a bank statement showing the initial balance of the escrow account. Simultaneously with establishment of the escrow account, the Settling Defendants shall initiate the Dispute Resolution procedures in Section XIX (Dispute Resolution). If the United States prevails in the dispute, within five (5) working days of the resolution of the dispute, the Settling Defendants shall pay the sums due (with accrued interest) to the United States in the manner described in Paragraph 54. If the Settling Defendants prevail concerning any aspect of the contested costs, the Settling Defendants shall pay that portion of the costs (plus associated accrued interest) for which they did not prevail to the United States in the manner described in Paragraph 54; Settling Defendants shall be disbursed any balance of the escrow account. The dispute resolution procedures set forth in this Paragraph in conjunction with the procedures set forth in Section XIX (Dispute Resolution) shall be the exclusive mechanisms for resolving disputes regarding the Settling Defendants' obligation to reimburse the United States for its Future Response Costs.

56. In the event that the payments required by Subparagraph 54 are not made within thirty (30) days of the Settling Defendants' receipt of the bill, Settling Defendants shall pay Interest on the unpaid balance. The Interest on Future Response Costs shall begin to accrue on the date of the bill. The Interest shall accrue through the date of the Settling Defendants' payment. Payments of Interest made under this Paragraph shall be in addition to such other remedies or sanctions available to Plaintiff by virtue of Settling Defendants' failure to make timely payments under this Section including, but not limited to, payment of stipulated penalties pursuant to

Paragraph 72. The Settling Defendants shall make all payments required by this Paragraph in the manner described in Paragraph 54.

57. Reserved

XVII. INDEMNIFICATION AND INSURANCE

58. a. The United States does not assume any liability by entering into this agreement or by virtue of any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Settling Defendants shall indemnify, save, and hold harmless the United States and its officials, agents, employees, contractors, subcontractors, or representatives for or from any and all claims or causes of action arising from, or on account of, negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree, including, but not limited to, any claims arising from any designation of Settling Defendants as EPA's authorized representatives under Section 104(e) of CERCLA. Further, the Settling Defendants agree to pay the United States all costs it incurs including, but not limited to, attorneys fees and other expenses of litigation and settlement arising from, or on account of, claims made against the United States based on negligent or other wrongful acts or omissions of Settling Defendants, their officers, directors, employees, agents, contractors, subcontractors, and any persons acting on their behalf or under their control, in carrying out activities pursuant to this Consent Decree. The United States shall not be held out as a party to any contract entered into by or on behalf of Settling Defendants in carrying out activities pursuant to this Consent Decree. Neither the Settling Defendants nor any such contractor shall be considered an agent of the United States.

b. The United States shall give Settling Defendants notice of any claim for which the

United States plans to seek indemnification pursuant to Paragraph 58.a., and shall consult with Settling Defendants prior to settling such claim.

59. Settling Defendants waive all claims against the United States for damages or reimbursement or for set-off of any payments made or to be made to the United States, arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays. In addition, Settling Defendants shall indemnify and hold harmless the United States with respect to any and all claims for damages or reimbursement arising from or on account of any contract, agreement, or arrangement between any one or more of Settling Defendants and any person for performance of Work on or relating to the Site, including, but not limited to, claims on account of construction delays.

60. No later than fifteen (15) days before commencing any on-site Work, Settling Defendants shall secure, and shall maintain until the first anniversary of EPA's Certification of Completion of the Remedial Action pursuant to Paragraph 50.b. of Section XIV (Certification of Completion), comprehensive general liability insurance with limits of five million dollars, combined single limit, and automobile liability insurance with limits of \$500,000, combined single limit, naming the United States as an additional insured. In addition, for the duration of this Consent Decree, Settling Defendants shall satisfy, or shall ensure that their contractors or subcontractors satisfy, all applicable laws and regulations regarding the provision of worker's compensation insurance for all persons performing the Work on behalf of Settling Defendants in furtherance of this Consent Decree. Prior to commencement of the Work under this Consent Decree, Settling Defendants shall provide to EPA certificates of such insurance and a copy of

each insurance policy. Settling Defendants shall resubmit such certificates and copies of policies each year on the anniversary of the Effective Date of this Consent Decree. If Settling Defendants demonstrate by evidence satisfactory to EPA that any contractor or subcontractor maintains insurance equivalent to that described above, or insurance covering the same risks but in a lesser amount, then, with respect to that contractor or subcontractor, Settling Defendants need provide only that portion of the insurance described above which is not maintained by the contractor or subcontractor. Settling Defendants may satisfy the provisions of this Paragraph 60 if they submit to EPA for approval one of the financial assurance mechanisms of Section XIII (Assurance of Ability to Complete Work) in at least the amounts stated in this Paragraph 60 demonstrating that Settling Defendants are able to pay any claims arising out of Settling Defendants' performance of their obligations under this Consent Decree. Such financial assurance mechanism shall meet all of the requirements of Section XIII (Assurance of Ability to Complete Work). If Settling Defendants seek to utilize the mechanisms set forth in Section XIII (Assurance of Ability to Complete Work) to satisfy the provisions of this Paragraph 60, they must demonstrate an ability to pay the amounts required under this Paragraph, above and beyond that required by the obligations of Section XIII (Assurance of Ability to Complete Work).

XVIII. FORCE MAJEURE

61. "Force majeure," for purposes of this Consent Decree, is defined as any event arising from causes beyond the control of the Settling Defendants, of any entity controlled by Settling Defendants, or of Settling Defendants' contractors, that delays or prevents the performance of any obligation under this Consent Decree despite Settling Defendants' best efforts to fulfill the obligation. The requirement that the Settling Defendants exercise "best efforts to fulfill the

obligation" includes using best efforts to anticipate any potential force majeure event and best efforts to address the effects of any potential force majeure event (a) as it is occurring, and (b) following the potential force majeure event, such that the delay is minimized to the greatest extent possible. "Force Majeure" does not include financial inability to complete the Work, a failure to attain the Performance Standards, or increased costs.

62. If any event occurs or has occurred that may delay the performance of any obligation under this Consent Decree, whether or not caused by a force majeure event, the Settling Defendants shall notify orally EPA's Project Coordinator or, in his or her absence, EPA's Alternate Project Coordinator or, in the event both of EPA's designated representatives are unavailable, the Director of the EPA Region III Hazardous Site Cleanup Division, within forty-eight (48) hours of when Settling Defendants first knew that the event might cause a delay. Within five (5) working days thereafter, Settling Defendants shall provide in writing to EPA an explanation and description of the reasons for the delay; the anticipated duration of the delay; all actions taken or to be taken to prevent or minimize the delay; a schedule for implementation of any measures to be taken to prevent or mitigate the delay or the effect of the delay; the Settling Defendants' rationale for attributing such delay to a force majeure event if they intend to assert such a claim; and a statement as to whether, in the opinion of the Settling Defendants, such event may cause or contribute to an endangerment to public health, welfare or the environment. The Settling Defendants shall include with any notice all available documentation supporting their claim that the delay was attributable to a force majeure. Failure to comply with the above requirements shall preclude Settling Defendants from asserting any claim of force majeure for that event for the period of time of such failure to comply, and for any additional delay caused by such failure. Settling Defendants shall be deemed to know of any circumstance of which Settling

Defendants, any entity controlled by Settling Defendants, or Settling Defendants' contractors knew or should have known.

63. If EPA agrees that the delay or anticipated delay is attributable to a force majeure event, the time for performance of the obligations under this Consent Decree that are affected by the force majeure event will be extended by EPA for such time as is necessary to complete those obligations. An extension of the time for performance of the obligations affected by the force majeure event shall not, of itself, extend the time for performance of any other obligation. If EPA does not agree that the delay or anticipated delay has been or will be caused by a force majeure event, EPA will notify the Settling Defendants in writing of its decision. If EPA agrees that the delay is attributable to a force majeure event, EPA will notify the Settling Defendants in writing of the length of the extension, if any, for performance of the obligations affected by the force majeure event.

64. If the Settling Defendants elect to invoke the dispute resolution procedures set forth in Section XIX (Dispute Resolution), they shall do so no later than fifteen (15) days after receipt of EPA's notice. In any such proceeding, Settling Defendants shall have the burden of demonstrating by a preponderance of the evidence that the delay or anticipated delay has been or will be caused by a force majeure event, that the duration of the delay or the extension sought was or will be warranted under the circumstances, that best efforts were exercised to avoid and mitigate the effects of the delay, and that Settling Defendants complied with the requirements of Paragraphs 61 and 62, above. If Settling Defendants carry this burden, the delay at issue shall be deemed not to be a violation by Settling Defendants of the affected obligation of this Consent Decree identified to EPA and the Court.

XIX. DISPUTE RESOLUTION

65. Unless otherwise expressly provided for in this Consent Decree, the dispute resolution procedures of this Section shall be the exclusive mechanism to resolve disputes arising under or with respect to this Consent Decree. However, the procedures set forth in this Section shall not apply to actions by the United States to enforce obligations of the Settling Defendants that have not been disputed in accordance with this Section.

66. Any dispute which arises under or with respect to this Consent Decree shall in the first instance be the subject of informal negotiations between the parties to the dispute. The period for informal negotiations shall not exceed twenty (20) days from the time the dispute arises, unless it is modified by written agreement of the parties to the dispute. The dispute shall be considered to have arisen when one party sends the other parties a written Notice of Dispute.

67. a. In the event that the parties cannot resolve a dispute by informal negotiations under the preceding Paragraph, then the position advanced by EPA shall be considered binding unless, within twenty (20) days after the conclusion of the informal negotiation period, Settling Defendants invoke the formal dispute resolution procedures of this Section by serving on the United States a written Statement of Position on the matter in dispute, including, but not limited to, any factual data, analysis or opinion supporting that position and any supporting documentation relied upon by the Settling Defendants. The Statement of Position shall specify the Settling Defendants' position as to whether formal dispute resolution should proceed under Paragraph 68 or Paragraph 69.

b. Within fourteen (14) days after receipt of Settling Defendants' Statement of Position, EPA will serve on Settling Defendants its Statement of Position, including, but not limited to, any factual data, analysis, or opinion supporting that position and all supporting

documentation relied upon by EPA. EPA's Statement of Position shall include a statement as to whether formal dispute resolution should proceed under Paragraph 68 or 69. Within seven (7) days after receipt of EPA's Statement of Position, Settling Defendants may submit a Reply.

c. If there is disagreement between EPA and the Settling Defendants as to whether dispute resolution should proceed under Paragraph 68 or 69, the parties to the dispute shall follow the procedures set forth in the Paragraph determined by EPA to be applicable. However, if the Settling Defendants ultimately appeal to the Court to resolve the dispute, the Court shall determine which Paragraph is applicable in accordance with the standards of applicability set forth in Paragraphs 68 and 69.

68. Formal dispute resolution for disputes pertaining to the selection or adequacy of any response action and all other disputes that are accorded review on the administrative record under applicable principles of administrative law shall be conducted pursuant to the procedures set forth in this Paragraph. For purposes of this Paragraph, the adequacy of any response action includes, without limitation: (1) the adequacy or appropriateness of plans, procedures to implement plans, or any other items requiring approval by EPA under this Consent Decree; and (2) the adequacy of the performance of response actions taken pursuant to this Consent Decree. Nothing in this Consent Decree shall be construed to allow any dispute by Settling Defendants regarding the validity of the ROD's provisions.

a. An administrative record of the dispute shall be maintained by EPA and shall contain all statements of position, including supporting documentation, submitted pursuant to this Section. Where appropriate, EPA may allow submission of supplemental statements of position by the parties to the dispute.

b. The Director of the Hazardous Site Cleanup Division, EPA Region III, will issue

a final administrative decision resolving the dispute based on the administrative record described in Paragraph 68.a. This decision shall be binding upon the Settling Defendants, subject only to the right to seek judicial review pursuant to Paragraph 68.c. and d.

c. Any administrative decision made by EPA pursuant to Paragraph 68.b. shall be reviewable by this Court, provided that a motion for judicial review of the decision is filed by the Settling Defendants with the Court and served on all Parties within twenty (20) days of receipt of EPA's decision. The motion shall include a description of the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of this Consent Decree. The United States may file a response to Settling Defendants' motion.

d. In proceedings on any dispute governed by this Paragraph, Settling Defendants shall have the burden of demonstrating that the decision of the Director of the Hazardous Site Cleanup Division, EPA Region III, is arbitrary and capricious or otherwise not in accordance with law. Judicial review of EPA's decision shall be on the administrative record compiled pursuant to Paragraph 68.a.

69. Formal dispute resolution for disputes that neither pertain to the selection or adequacy of any response action nor are otherwise accorded review on the administrative record under applicable principles of administrative law, shall be governed by this Paragraph.

a. Following receipt of Settling Defendants' Statement of Position submitted pursuant to Paragraph 67, the Director of the Hazardous Site Cleanup Division, EPA Region III, will issue a final decision resolving the dispute. The Director's decision shall be binding on the Settling Defendants unless, within twenty (20) days of receipt of the decision, the Settling Defendants file with the Court and serve on the parties a motion for judicial review of the

decision setting forth the matter in dispute, the efforts made by the parties to resolve it, the relief requested, and the schedule, if any, within which the dispute must be resolved to ensure orderly implementation of the Consent Decree. The United States may file a response to Settling Defendants' motion.

b. Notwithstanding Paragraph R of Section I (Background) of this Consent Decree, judicial review of any dispute governed by this Paragraph shall be governed by applicable principles of law.

70. The invocation of formal dispute resolution procedures under this Section shall not extend, postpone, or affect in any way any obligation of the Settling Defendants under this Consent Decree, not directly in dispute, unless EPA or the Court agrees otherwise. Stipulated penalties with respect to the disputed matter shall continue to accrue but payment shall be stayed pending resolution of the dispute as provided in Paragraph 79. Notwithstanding the stay of payment, stipulated penalties shall accrue from the first day of noncompliance with any applicable provision of this Consent Decree. In the event that the Settling Defendants do not prevail on the disputed issue, stipulated penalties shall be assessed and paid as provided in Section XX (Stipulated Penalties).

XX. STIPULATED PENALTIES

71. Settling Defendants shall be liable for stipulated penalties in the amounts set forth in Paragraphs 72 and 73 to the United States for failure to comply with the requirements of this Consent Decree specified below, unless excused under Section XVIII (Force Majeure).

"Compliance" by Settling Defendants shall include completion of the activities under this Consent Decree or any work plan or other plan approved under this Consent Decree identified

below in accordance with all applicable requirements of law, this Consent Decree, and any plans or other documents approved by EPA pursuant to this Consent Decree and within the specified time schedules established by and approved under this Consent Decree.

72. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 1,000.00	1 st through 14 th day
\$2,500.00	15 th through 30 th day
\$5,000.00	31 st day and beyond

b. Failure to comply with requirements of Section VI (Performance of the Work by Settling Defendants), Section VII (Remedy Review), Section VIII (Quality Assurance, Sampling, and Data Analysis), Section XI (EPA Approval of Plans and Other Submissions), Section XV (Emergency Response), and Section XVI (Payment For Response Costs).

73. a. The following stipulated penalties shall accrue per violation per day for any noncompliance identified in Subparagraph b:

<i>Penalty Per Violation Per Day</i>	<i>Period of Noncompliance</i>
\$ 500.00	1 st through 14 th day
\$ 1,000.00	15 th through 30 th day
\$ 2,000.00	31 st day and beyond

b. All requirements of this Consent Decree that are not identified in Paragraph 72(b) of this Consent Decree.

74. In the event that EPA assumes performance of a portion or all of the Work pursuant to Paragraph 87 of Section XXI (Covenants Not to Sue by Plaintiff), Settling Defendants shall be

liable for a stipulated penalty in the amount of \$35,000.00.

75. All penalties shall begin to accrue on the day after the complete performance is due or the day a violation occurs, and shall continue to accrue through the final day of the correction of the noncompliance or completion of the activity. However, stipulated penalties shall not accrue: (1) with respect to a deficient submission under Section XI (EPA Approval of Plans and Other Submissions), during the period, if any, beginning on the 31st day after EPA's receipt of such submission until the date that EPA notifies Settling Defendants of any deficiency; (2) with respect to a decision by the Director of the Hazardous Site Cleanup Division, EPA Region III, under Paragraph 68.b. or 69.a. of Section XIX (Dispute Resolution), during the period, if any, beginning on the 21st day after the date that Settling Defendants' reply to EPA's Statement of Position is received until the date that the Director of the Hazardous Site Cleanup Division, EPA Region III, issues a final decision regarding such dispute; or (3) with respect to judicial review by this Court of any dispute under Section XIX (Dispute Resolution), during the period, if any, beginning on the 31st day after the Court's receipt of the final submission regarding the dispute until the date that the Court issues a final decision regarding such dispute. Nothing herein shall prevent the simultaneous accrual of separate penalties for separate violations of this Consent Decree.

76. Following EPA's determination that Settling Defendants have failed to comply with a requirement of this Consent Decree, EPA may give Settling Defendants written notification of the same and describe the noncompliance. EPA may send the Settling Defendants a written demand for the payment of the penalties. However, penalties shall accrue as provided in the preceding Paragraph regardless of whether EPA has notified the Settling Defendants of a violation.

77. All penalties accruing under this Section shall be due and payable to the United States within thirty (30) days of the Settling Defendants' receipt from EPA of a demand for payment of the penalties, unless Settling Defendants invoke the Dispute Resolution procedures under Section XIX (Dispute Resolution). All payments to the United States under this Section shall be paid by certified or cashier's check(s) made payable to "EPA Hazardous Substances Superfund," shall be mailed to the United States Environmental Protection Agency, Region III, Attention: Superfund Accounting, P.O. Box 360515, Pittsburgh, PA 15251-6515, shall indicate that the payment is for stipulated penalties, and shall reference the EPA Region and Site/Spill ID No. 038B, the DOJ Case Number 90-11-2-1283, and the name and address of the party making payment. Copies of check(s) paid pursuant to this Section, and any accompanying transmittal letter(s), shall be sent to the United States as provided in Section XXVI (Notices and Submissions), and to the Docket Clerk (3RC00), United States Environmental Protection Agency, Region III, 1650 Arch Street, Philadelphia, PA 19103.

78. The payment of penalties shall not alter in any way Settling Defendants' obligation to complete the performance of the Work required under this Consent Decree.

79. Penalties shall continue to accrue as provided in Paragraph 75 during any dispute resolution period, but need not be paid until the following:

a. If the dispute is resolved by agreement or by a decision of EPA that is not appealed to this Court, accrued penalties determined to be owing shall be paid to EPA within fifteen (15) days of the agreement or the receipt of EPA's decision or order;

b. If the dispute is appealed to this Court and the United States prevails in whole or in part, Settling Defendants shall pay all accrued penalties determined by the Court to be owed to EPA within sixty (60) days of receipt of the Court's decision or order, except as provided in

Subparagraph c below;

c. If the District Court's decision is appealed by any Party, Settling Defendants shall pay all accrued penalties determined by the District Court to be owing to the United States into an interest-bearing escrow account within sixty (60) days of receipt of the Court's decision or order. Penalties shall be paid into this account as they continue to accrue, at least every sixty (60) days. Within fifteen (15) days of receipt of the final appellate court decision, the escrow agent shall pay the balance of the account to EPA or to Settling Defendants to the extent that they prevail.

80. a. If Settling Defendants fail to pay stipulated penalties when due, the United States may institute proceedings to collect the penalties, as well as interest. Settling Defendants shall pay interest on the unpaid balance, which shall begin to accrue on the date of demand made pursuant to Paragraph 77.

b. Nothing in this Consent Decree shall be construed as prohibiting, altering, or in any way limiting the ability of the United States to seek any other remedies or sanctions available by virtue of Settling Defendants' violation of this Decree or of the statutes and regulations upon which it is based, including, but not limited to, penalties pursuant to Section 122(l) of CERCLA. Provided, however, that for any particular violation of this Consent Decree, the United States shall be limited to either demanding stipulated penalties pursuant to this Section XX of the Consent Decree or pursuing civil penalties pursuant to Section 122(l) of CERCLA, except in the case of a willful violation of the Consent Decree.

81. Notwithstanding any other provision of this Section, the United States may, in its unreviewable discretion, waive any portion of stipulated penalties that have accrued pursuant to this Consent Decree.

XXI. COVENANTS NOT TO SUE BY PLAINTIFF

82. Covenant as to Settling Defendant. In consideration of the actions that will be performed by the Settling Defendants under the terms of the Consent Decree, and except as specifically provided in Paragraphs 83, 84, and 86 of this Section, the United States covenants not to sue or to take administrative action (including, but not limited to, imposing or enforcing any liens on the Property pursuant to Sections 107(l) of CERCLA, 42 U.S.C. §§9607 (l)), against Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA relating to the Site that arise from the Settling Defendants' ownership and/or operation of the Property or Quarry 4, including, without limitation, suits and administrative actions pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), related to (1) Past Response Costs and/or (2) the selected or contingent ground water remedy set forth in the ROD or any other ground water remedy at the Site. The United States' covenants not to sue do not include any claims by the United States' for civil or administrative action against the Settling Defendants pursuant to Sections 106 and 107(a) of CERCLA, 42 U.S.C. §§ 9606 and 9607(a), for any and all liabilities arising from Settling Defendants' ownership and/or operation of other properties, now or in the future.

Except with respect to future liability for the Work, these covenants not to sue shall take effect upon the Effective Date. With respect to future liability for the Work, these covenants not to sue shall take effect upon Certification of Completion of Remedial Action for the Work by EPA pursuant to Paragraph 50.b of Section XIV (Certification of Completion). These covenants not to sue are conditioned upon the satisfactory performance by Settling Defendants of their obligations under this Consent Decree. Except as provided in Paragraph 88 of this Section, these

covenants not to sue extend only to the Settling Defendants and do not extend to any other person.

83. United States' Pre-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions to address soils or sediment at the Property and/or Quarry 4 or (2) to reimburse the United States for additional costs of future soil or sediment response at the Property and/or Quarry 4 if, prior to Certification of Completion of the Remedial Action pursuant to Paragraph 50.b:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
 - (ii) information, previously unknown to EPA, is received, in whole or in part,
- and EPA determines that these previously unknown conditions or information together with any other relevant information indicates that the Remedial Action at the Property or Quarry 4 is not protective of human health or the environment.

84. United States' Post-Certification Reservations. Notwithstanding any other provision of this Consent Decree, the United States reserves, and this Consent Decree is without prejudice to, the right to institute proceedings in this action or in a new action, or to issue an administrative order seeking to compel Settling Defendants (1) to perform further response actions to address soils or sediment at the Property and/or Quarry 4 or (2) to reimburse the United States for additional costs of future soil or sediment response at the Property and/or Quarry 4 if, subsequent to Certification of Completion of the Remedial Action pursuant to Paragraph 50.b:

- (i) conditions at the Site, previously unknown to EPA, are discovered, or
- (ii) information, previously unknown to EPA, is received,

in whole or in part,

and EPA determines that these previously unknown conditions or this information together with other relevant information indicate that the Remedial Action at the Property or Quarry 4 is not protective of human health or the environment.

85. For purposes of Paragraph 83, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date the lodging of this Consent Decree, including information and conditions set forth in the Record of Decision for the Site and the administrative record supporting the Record of Decision, or the post-ROD administrative record or any information received by EPA pertaining to the Site prior to the lodging of this Consent Decree. For purposes of Paragraph 84, the information and the conditions known to EPA shall include only that information and those conditions known to EPA as of the date of Certification of Completion of the Remedial Action, including information and conditions set forth in the Record of Decision, the administrative record supporting the Record of Decision, the post-ROD administrative record, or in any information received by EPA pursuant to the requirements of this Consent Decree prior to Certification of Completion of the Remedial Action.

86. General Reservation of Rights. The covenants not to sue set forth above do not pertain to any matters other than those expressly specified in Paragraph 82. The United States reserves, and this Consent Decree is without prejudice to, all rights against Settling Defendants with respect to all matters not expressly included within Plaintiffs' covenant not to sue. Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against Settling Defendants with respect to:

- (1) claims based on a failure by Settling Defendants to meet a requirement of this

Consent Decree;

(2) liability arising from the past, present, or future disposal, release, or threat of release of Waste Material outside of the Site;

(3) liability based upon the Settling Defendants' transportation, treatment, storage, or disposal, or the arrangement for the transportation, treatment, storage, or disposal of Waste Material at or in connection with the Site, other than as provided in the ROD, the Work, or otherwise ordered by EPA, after signature of this Consent Decree by the Settling Defendants;

(4) liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments;

(5) criminal liability;

(6) liability for violations of federal or state law which occur during or after implementation of the Remedial Action;

(7) liability arising from the exacerbation of the plume of contaminated ground water at the Site by actions taken by the Settling Defendants;

(8) liability based upon the Settling Defendants ownership or operation of properties other than the Property, at the Site; and

(9) liability arising under the Second Administrative Settlement Agreement and Order on Consent For Removal Action, EPA Docket No. CERC-03-2005-0365 DC (the "Pipeline Removal ASA/OC") for failure of Settling Defendants to comply with the Pipeline Removal ASA/OC governing the Settling Defendants' WAL Pipeline investigation and removal on 3000 Horizon Drive.

87. Work Takeover. In the event EPA determines that Settling Defendants have ceased

implementation of any portion of the Work, are seriously or repeatedly deficient or late in their performance of the Work, or are implementing the Work in a manner which may cause an endangerment to human health or the environment, EPA may assume the performance of all or any portions of the Work as EPA determines necessary. EPA will provide Settling Defendants with notice of its decision to take over the Work. Settling Defendants may invoke the procedures set forth in Section XIX (Dispute Resolution), Paragraph 68, to dispute EPA's determination that takeover of the Work is warranted under this Paragraph. Costs incurred by the United States in performing the Work pursuant to this Paragraph shall be considered Emergency Response Costs that Settling Defendants shall pay pursuant to Section XVI (Payment For Response Costs).

88. Covenant as to Successors in Interest and/or Assigns. Except as specifically provided in Paragraph 89, the United States covenants not to sue or take any other civil or administrative action (including but not limited to imposing or enforcing any liens on the Property pursuant to Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. § § 9607 (l) or 9607(r)), against a Successor in Interest and/or Assign for any and all civil liability for injunctive relief or reimbursement of response costs pursuant to Sections 106 or 107(a) of CERCLA, 42 U.S.C. § § 9606 or 9607(a), with respect to Existing Contamination, and to release any lien that it may have on the Property under Sections 107(l) or 107(r) of CERCLA, 42 U.S.C. § § 9607(l) or 9607(r), as a result of response actions conducted at the Property, if prior to or simultaneously with the sale, lease or conveyance of the Property or portion of the Property, the Successor in Interest and/or Assign signs the Agreement and Certification of Successor in Interest and/or Assign (the form of which is attached as Appendix F). This covenant not to sue is subject to the following conditions:

- a. The Agreement and Certification of Successor in Interest and/or Assign signed by

the Successor in Interest and/or Assign must exactly duplicate the form attached as Appendix F, unless otherwise agreed by EPA, and thereby the Successor in Interest and/or Assign certifies and agrees to the following:

- i. The Successor in Interest and/or Assign must certify to EPA that to the best of its knowledge and belief, it has not caused or contributed to a release or threat of a release of hazardous substances or pollutants or contaminants to, at or from the Site; and that it was not a past owner or operator of the Property;
- ii. With respect to Existing Contamination, the Successor in Interest and/or Assign shall agree to exercise due care at the Property, or the portion of the Property it will lease, own or otherwise have an interest in; and due care shall include, but not be limited to, taking reasonable steps necessary to protect the public from an environmental threat due to the disturbance, or releases of, the Existing Contamination.
- iii. With respect to Existing Contamination, the Successor in Interest and/or Assign shall agree to comply with all applicable local, state, and federal laws and regulations;
- iv. The Successor in Interest and/or Assign shall acknowledge that it is purchasing, leasing or otherwise acquiring an interest in Property where response actions may be required, and that the implementation of response actions at the Property may interfere with its use of the Property, and may require closure of its operations or a part thereof. The Successor in Interest and/or Assign shall agree to cooperate fully with EPA in the implementation

of response actions at the Site and not to interfere with such response actions. EPA will, consistent with its responsibilities under applicable law, use reasonable efforts to avoid or minimize any interference with the operations of Successor in Interest and/or Assign, or the operations of the Successor in Interest's and/or Assign's lessees, sublessees, contractors and agents, by implementation of such response actions;

v. The Successor in Interest and/or Assign shall agree that in the event the Successor in Interest and/or Assign becomes aware of any action or occurrence which causes or threatens a release of hazardous substances, pollutants or contaminants at or from the Property, or the portion of the Property it owns, leases or otherwise has an interest in that constitutes an emergency situation or may present an immediate threat to public health or welfare or the environment, it will immediately take all appropriate action as required by law to prevent, abate, or minimize such release or threat of release, and shall, in addition to complying with any applicable notification requirements under Section 103 of CERCLA, 42 U.S.C. § 9603, or any other law, immediately notify EPA of such release or threatened release; and

vi. The Successor in Interest and/or Assign shall agree to the terms and conditions of this Consent Decree set forth in Paragraphs 88 and 89 of Section XXI. (Covenants Not to Sue by Plaintiff), Paragraph 97 of Section XXIII (Effect of Settlement/Contribution Protection), and Sections IV (Definitions) and XXVIII (Retention of Jurisdiction) of this Consent Decree

to the extent they are specifically applicable to a Successor in Interest and/or Assign.

- b. With respect to a Successor in Interest and/or Assign which purchases, leases or otherwise obtains an interest in all or any portion of the Property from the Settling Defendant, this covenant not to sue shall take effect upon the receipt by EPA of an Agreement and Certification of Successor in Interest and/or Assign setting forth the foregoing certifications, representations, and agreements, in the form attached as Appendix F, which has been fully executed and certified by the Successor in Interest and/or Assign or its authorized corporate official or other representative.
- c. For subsequent Successors in Interest and/or Assigns, which purchase, lease or otherwise obtain an interest in all or any portion of the Property from a prior Successor in Interest and/or Assign, this covenant not to sue shall take effect upon the receipt by EPA of an Agreement and Certification of Successor in Interest and/or Assign setting forth the foregoing certifications, representations, and agreements, in the form attached as Appendix F, which has been fully executed and certified by the subsequent Successor in Interest and/or Assign or its authorized corporate official or other representative.
- d. In the event any representation or certification in Paragraph 7(a) of the Agreement and Certification of Successor in Interest and/or Assign submitted by a Successor in Interest and/or Assign (described in subparagraph (a)(i) above) is materially inaccurate or incomplete, the covenant not to sue in this Paragraph 88 shall be null and void with respect to such Successor in Interest and/or Assign,

and the United States reserves all rights it may have against such Successor in Interest and/or Assign.

e. The covenant not to sue in this Paragraph 88 does not extend to any person other than a Successor in Interest and/or Assign which has executed the Agreement and Certification of Successor in Interest and/or Assign, the form of which is attached at Appendix F.

89. Reservation of Rights with regard to Successors in Interest and/or Assign. The United States reserves, and this Consent Decree is without prejudice to, all rights against a Successor in Interest and/or Assign with respect to all matters not expressly included within the Covenant Not to Sue by United States in Section XXI (Covenants Not to Sue by Plaintiff). Notwithstanding any other provision of this Consent Decree, the United States reserves all rights against a Successor in Interest and/or Assign with respect to:

- a. claims based on the failure of a Successor in Interest and/or Assign to meet a requirement of its Agreement and Certification of Successor in Interest and/or Assign or an applicable requirement of this Consent Decree;
- b. any liability resulting from exacerbation by a Successor in Interest and/or Assign, its corporate successors, assigns, lessees or sublessees, of Existing Contamination;
- c. any liability resulting from the release or threat of release of hazardous substances, pollutants or contaminants, at the Property or Site after the Effective Date of this Consent Decree, not within the definition of Existing Contamination;
- d. any liability arising from the past, present, or future disposal, release or threat of release of a hazardous substance, pollutant, or contaminant outside of the Site;

e. criminal liability; and

f. any liability for damages for injury to, destruction of, or loss of natural resources, and for the costs of any natural resource damage assessments incurred by federal agencies other than EPA.

90. With respect to any claim or cause of action asserted by the United States, the Successor in Interest and/or Assign, shall bear the burden of proving that the claim or cause of action, or any part thereof, is attributable solely to Existing Contamination.

91. Notwithstanding any other provision of this Consent Decree, the United States retains all authority and reserves all rights to take any and all response actions authorized by law.

XXII. COVENANTS BY SETTLING DEFENDANTS

92. Covenant Not to Sue. Subject to the reservations in Paragraph 93, Settling Defendants hereby covenant not to sue and agree not to assert any claims or causes of action against the United States with respect to the Site or this Consent Decree, (other than to enforce the terms of this Consent Decree) including, but not limited to:

a. any direct or indirect claim for reimbursement from the Hazardous Substance Superfund (established pursuant to the Internal Revenue Code, 26 U.S.C. § 9507) through CERCLA §§ 106(b)(2), 107, 111, 112, 113, or any other provision of law;

b. any claims against the United States, including any department, agency or instrumentality of the United States under CERCLA Sections 107 or 113 related to the Site, or

c. any claims arising out of response actions at or in connection with the Site, including any claim under the United States Constitution, the Tucker Act, 28 U.S.C. § 1491, the

Equal Access to Justice Act, 28 U.S.C. § 2412, as amended, or at common law.

Except as provided in Paragraph 100 (waiver of Claim-Splitting Defenses), these covenants not to sue shall not apply in the event that the United States brings a cause of action or issues an order pursuant to the reservations set forth in Paragraphs 83, 84, 86(2)-(89), but only to the extent that Settling Defendants' claims arise from the same response action, response costs, or damages that the United States is seeking pursuant to the applicable reservation.

93. The Settling Defendants reserve, and this Consent Decree is without prejudice to, claims against the United States, subject to the provisions of Chapter 171 of Title 28 of the United States Code, for money damages for injury or loss of property or personal injury or death caused by the negligent or wrongful act or omission of any employee of the United States while acting within the scope of his or her office or employment under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred. However, any such claim shall not include a claim for any damages caused, in whole or in part, by the act or omission of any person, including any contractor, who is not a federal employee as that term is defined in 28 U.S.C. § 2671; nor shall any such claim include a claim based on EPA's selection of response actions, or the oversight or approval of the Settling Defendants' plans or activities. The foregoing applies only to claims which are brought pursuant to any statute other than CERCLA and for which the waiver of sovereign immunity is found in a statute other than CERCLA.

94. Nothing in this Consent Decree shall be deemed to constitute preauthorization of a claim within the meaning of Section 111 of CERCLA, 42 U.S.C. § 9611, or 40 C.F.R. § 300.700(d).

XXIII. EFFECT OF SETTLEMENT; CONTRIBUTION PROTECTION

95. Nothing in this Consent Decree shall be construed to create any rights in, or grant any cause of action to, any person not a Party to this Consent Decree or a Successor in Interest and/or Assign. The preceding sentence shall not be construed to waive or nullify any rights that any person not a signatory to this decree may have under applicable law. Each of the Parties expressly reserves any and all rights (including, but not limited to, any right to contribution), defenses, claims, demands, and causes of action which each Party may have with respect to any matter, transaction, or occurrence relating in any way to the Site against any person not a Party hereto other than a Successor in Interest and/or Assign.

96. The Parties agree, and by entering this Consent Decree this Court finds, that the Settling Defendants are entitled, as of the Effective Date, to protection from contribution actions or claims as provided by CERCLA Section 113(f)(2), 42 U.S.C. § 9613(f)(2), for matters addressed in this Consent Decree. The "matters addressed" in this Consent Decree are all response actions taken and to be taken and all response costs incurred and to be incurred by the United States and/or by any private parties, at or in connection with the Site.

97. Contribution Protection with regard to Successors in Interest and/or Assign. A Successor in Interest and/or Assign which executes the Agreement and Certification of Successor in Interest and/or Assign (the form of which is attached hereto as Appendix F) shall be entitled to protection from contribution actions or claims as provided by Section 113(f)(2) of CERCLA, 42 U.S.C. § 9613(f)(2), for matters addressed in the Agreement and Certification of Successor in Interest and/or Assign and the provisions of this Consent Decree applicable to a Successor in Interest and/or Assign. The "matters addressed" in this Consent Decree and the Agreement and Certification of Successors in Interest and/or Assign are all response actions taken or to be taken

and all response costs incurred or to be incurred, at or in connection with the Site, by the United States or any other person with respect to Existing Contamination. Contribution protection under this Paragraph shall take effect as to a Successor in Interest and/or Assign at the same time that the United States' covenant not to sue takes effect with respect to such Successor in Interest and/or Assign, as set forth in Paragraph 88.

98. The Settling Defendants agree that with respect to any suit or claim for contribution brought by them for matters related to this Consent Decree they will notify the United States in writing no later than sixty (60) days prior to the initiation of such suit or claim.

99. The Settling Defendants also agree that with respect to any suit or claim for contribution brought against them for matters related to this Consent Decree they will notify in writing the United States within ten (10) days of service of the complaint on them. In addition, Settling Defendants shall notify the United States within ten (10) days of service or receipt of any Motion for Summary Judgment and within ten (10) days of receipt of any order from a court setting a case for trial.

100. In any subsequent administrative or judicial proceeding initiated by the United States for injunctive relief, recovery of response costs, or other appropriate relief relating to the Site, Settling Defendants shall not assert, and may not maintain, any defense or claim based upon the principles of waiver, res judicata, collateral estoppel, issue preclusion, claim-splitting, or other defenses based upon any contention that the claims raised by the United States in the subsequent proceeding were or should have been brought in the instant case; provided, however, that nothing in this Paragraph affects the enforceability of the covenants not to sue set forth in Section XXI (Covenants Not to Sue by Plaintiff).

XXIV. ACCESS TO INFORMATION

101. Settling Defendants shall provide to EPA, upon request, copies of all documents and information within their possession or control or that of their contractors or agents relating to activities at the Site or to the implementation of this Consent Decree, including, but not limited to, sampling, analysis, chain of custody records, manifests, trucking logs, receipts, reports, sample traffic routing, correspondence, or other documents or information related to the Work. Settling Defendants shall also make available to EPA, for purposes of investigation, information gathering, or testimony, their employees, agents, or representatives with knowledge of relevant facts concerning the performance of the Work.

102. a. Settling Defendants may assert business confidentiality claims covering part or all of the documents or information submitted to Plaintiff under this Consent Decree to the extent permitted by and in accordance with Section 104(e)(7) of CERCLA, 42 U.S.C. § 9604(e)(7), or 40 C.F.R. Part 2, Subpart B. Documents or information determined to be confidential by EPA will be afforded the protection specified in 40 C.F.R. Part 2, Subpart B. If no claim of confidentiality accompanies documents or information when they are submitted to EPA, or if EPA has notified Settling Defendants that the documents or information are not confidential under the standards of Section 104(e)(7) of CERCLA, the public may be given access to such documents or information without further notice to Settling Defendants.

b. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege in lieu of providing documents, they shall provide the Plaintiff with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the

author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the contents of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

103. No claim of confidentiality shall be made with respect to any data, including, but not limited to, all sampling, analytical, monitoring, hydrogeologic, scientific, chemical, or engineering data, or any other documents or information evidencing conditions at or around the Site.

XXV. RETENTION OF RECORDS

104. Until ten (10) years after the Settling Defendants' receipt of EPA's notification pursuant to Paragraph 51.b of Section XIV (Certification of Completion of the Work), each Settling Defendant shall preserve and retain all non-identical copies of records and documents (including records or documents in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to its liability under CERCLA with respect to the Site, provided, however, that Settling Defendants who are potentially liable as owners or operators of the Site must retain, in addition, all documents and records that relate to the liability of any other person under CERCLA with respect to the Site. Each Settling Defendant must also retain, and instruct its contractors and agents to preserve, for the same period of time specified above, all non-identical copies of the last draft or final version of any documents or records (including documents or records in electronic form) now in its possession or control or which come into its possession or control that relate in any manner to the performance of the Work, provided, however, that each Settling Defendant (and its contractors and agents) must retain, in

addition, copies of all data generated during the performance of the Work and not contained in the aforementioned documents required to be retained. Each of the above record retention requirements shall apply regardless of any corporate retention policy to the contrary.

105. At the conclusion of this document retention period, Settling Defendants shall notify the United States at least ninety (90) days prior to the destruction of any such records or documents, and, upon request by the United States, Settling Defendants shall deliver any such records or documents to EPA. If the United States has not responded to Settling Defendants' notice prior to the time Settling Defendants intend to destroy the records or documents, Settling Defendants shall deliver all such records and documents to EPA no earlier than ten (10) days after providing an additional written notice that such records and documents will be delivered, unless EPA provides otherwise after receiving such notice. The Settling Defendants may assert that certain documents, records and other information are privileged under the attorney-client privilege or any other privilege recognized by federal law. If the Settling Defendants assert such a privilege, they shall provide the Plaintiffs with the following: (1) the title of the document, record, or information; (2) the date of the document, record, or information; (3) the name and title of the author of the document, record, or information; (4) the name and title of each addressee and recipient; (5) a description of the subject of the document, record, or information; and (6) the privilege asserted by Settling Defendants. However, no documents, reports, or other information created or generated pursuant to the requirements of the Consent Decree shall be withheld on the grounds that they are privileged.

106. Each Settling Defendant hereby certifies individually that, to the best of its knowledge and belief, after thorough inquiry, it has not altered, mutilated, discarded, destroyed, or otherwise disposed of any records, documents, or other information (other than identical copies) relating to

its potential liability regarding the Site since notification of potential liability by the United States or the State or the filing of suit against it regarding the Site and that it has fully complied with any and all EPA requests for information pursuant to Sections 104(e) and 122(e) of CERCLA, 42 U.S.C. §§ 9604(e) and 9622(e), and Section 3007 of RCRA, 42 U.S.C. § 6927.

XXVI. NOTICES AND SUBMISSIONS

107. Whenever, under the terms of this Consent Decree, written notice is required to be given or a report or other document is required to be sent by one Party to another, it shall be directed to the individuals at the addresses specified below, unless those individuals or their successors give notice of a change to the other Parties in writing. All notices and submissions shall be considered effective upon receipt, unless otherwise provided. Written notice as specified herein shall constitute complete satisfaction of any written notice requirement of the Consent Decree with respect to the United States, EPA , the State, and the Settling Defendants, respectively.

As to the United States:

John Cruden
Chief, Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
P.O. Box 7611
Washington, D.C. 20044-7611
Re: DOJ # 90-11-2-1283

and

Patricia C. Miller
Senior Assistant Regional Counsel (3RC42)
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to EPA:

Joseph McDowell (3HS21)
EPA Project Coordinator
United States Environmental Protection Agency
Region III
1650 Arch Street
Philadelphia, PA 19103

As to the State:

David Minsker
State Project Coordinator
Pennsylvania Department of Environmental Protection
Southeast Regional Office
2 E. Main Street
Norristown, PA 19401

As to the Settling Defendants:

Jeff Leed
Settling Defendants' Project Coordinator
Leed Environmental, Inc.
Van Reed Office Plaza
2209 Quarry Drive, Suite C-35
Reading, PA 19609

Michael Christie
Settling Defendants' Contractor
Penn E & R, Inc.
2755 Bergey Road
Hatfield, PA 19440

Brenda Hustis Gotanda, Esq.
Manko, Gold, Katcher & Fox, LLP
401 City Avenue, Suite 500
Bala Cynwyd, PA 19004

XXVII. EFFECTIVE DATE

108. The Effective Date of this Consent Decree shall be the date upon which this Consent Decree is entered by the Court, except as otherwise provided herein.

XXVIII. RETENTION OF JURISDICTION

109. This Court retains jurisdiction over both the subject matter of this Consent Decree and the Settling Defendants for the duration of the performance of the terms and provisions of this Consent Decree for the purpose of enabling any of the Parties to apply to the Court at any time for such further order, direction, and relief as may be necessary or appropriate for the construction or modification of this Consent Decree, or to effectuate or enforce compliance with its terms, or to resolve disputes in accordance with Section XIX (Dispute Resolution) hereof.

XXIX. APPENDICES

110. The following appendices are attached to and incorporated into this Consent Decree:

“Appendix A” is the ROD.

“Appendix B” is the Deed for the Yellow Property.

“Appendix C” is the Deed for the Pink Property.

“Appendix D” is the Deed for 3000 Horizon Drive.

“Appendix E” is the map of the Liberty Properties and the Site.

“Appendix F” is the Agreement and Certification of Successors in Interest and/or Assigns

“Appendix G” is the Draft Easement and Restrictive Covenants

XXX. COMMUNITY RELATIONS

111. At EPA's request Settling Defendants shall propose to EPA their participation in the community relations plan to be developed by EPA. EPA will determine the appropriate role for the Settling Defendants under the Plan. Settling Defendants shall also cooperate with EPA in providing information regarding the Work to the public. As requested by EPA, Settling Defendants shall participate in the preparation of such information for dissemination to the public and in public meetings which may be held or sponsored by EPA to explain activities at or relating to the Site.

XXXI. MODIFICATION

112. Schedules specified in this Consent Decree for completion of the Work may be modified by agreement of the EPA Project Coordinator and the Settling Defendants. All such modifications shall be made in writing.

113. Except as otherwise provided in this Paragraph, no modifications shall be made to provisions of this Consent Decree without written notification to and written approval of the United States, Settling Defendants, and the Court. Prior to providing its approval to any modification to the provisions of this Consent Decree, the United States will provide the State with a reasonable opportunity to review and comment on the proposed modification. Modifications to the Remedial Design Work Plan, Remedial Action Work Plan, and any other plan approved by EPA under this Consent Decree that do not materially alter the requirements of those documents may be made by written agreement between the EPA Project Coordinator, after providing the State with a reasonable opportunity to review and comment on the proposed modification, and the Settling Defendants. Modifications to the Work made pursuant to

Paragraph 14 ("Modification of the Work") may be made by EPA. Nothing in this Decree shall be deemed to alter the Court's power to enforce, supervise, or approve modifications to this Consent Decree.

XXXII. LODGING AND OPPORTUNITY FOR PUBLIC COMMENT

114. This Consent Decree shall be lodged with the Court for a period of not less than thirty (30) days for public notice and comment in accordance with Section 122(d)(2) of CERCLA, 42 U.S.C. § 9622(d)(2), and 28 C.F.R. § 50.7. The United States reserves the right to withdraw or withhold its consent if the comments regarding the Consent Decree disclose facts or considerations which indicate that the Consent Decree is inappropriate, improper, or inadequate. Settling Defendants consent to the entry of this Consent Decree without further notice.

115. If for any reason the Court should decline to approve this Consent Decree in the form presented, this agreement is voidable at the sole discretion of any Party and the terms of the agreement may not be used as evidence in any litigation between the Parties.

XXXIII. SIGNATORIES/SERVICE

116. Each undersigned representative of a Settling Defendant to this Consent Decree and the Assistant Attorney General for the Environment and Natural Resources Division of the Department of Justice certifies that he or she is fully authorized to enter into the terms and conditions of this Consent Decree and to execute and legally bind such Party to this document.

117. Each Settling Defendant hereby agrees not to oppose entry of this Consent Decree by this Court or to challenge any provision of this Consent Decree unless the United States has

notified the Settling Defendants in writing that it no longer supports entry of the Consent Decree.

118. Each Settling Defendant shall identify, on the attached signature page, the name, address, and telephone number of an agent who is authorized to accept service of process by mail on behalf of that Party with respect to all matters arising under or relating to this Consent Decree. Settling Defendants hereby agree to accept service in that manner and to waive the formal service requirements set forth in Rule 4 of the Federal Rules of Civil Procedure and any applicable local rules of this Court, including, but not limited to, service of a summons. The parties agree that Settling Defendants need not file an answer to the complaint in this action unless or until the court expressly declines to enter this Consent Decree.

XXXIV. RELATIONSHIP BETWEEN UNILATERAL ADMINISTRATIVE ORDER AND CONSENT DECREE

119. Upon the Effective Date of this Consent Decree the Settling Defendants' obligations under the RD/RA UAO, EPA Docket No.:3-2001-0009, shall terminate. It is agreed by the Parties, that upon termination of the Settling Defendants' obligations under the RD/RA UAO due to entry of this Consent Decree, performance of work commenced by Settling Defendants under the RD/RA UAO shall continue under this Consent Decree in accordance with the EPA-approved schedules and requirements developed under the RD/RA UAO. To the extent that Settling Defendants have fulfilled obligations under the RD/RA UAO that are also required by this Consent Decree, Settling Defendants shall also be deemed to have fulfilled such obligations under this Consent Decree.

XXXV. FINAL JUDGMENT

120. This Consent Decree and its appendices constitute the final, complete, and exclusive agreement and understanding among the parties with respect to the settlement embodied in the Consent Decree. The parties acknowledge that there are no representations, agreements, or understandings relating to the settlement other than those expressly contained in this Consent Decree. Upon approval and entry of this Consent Decree by the Court, this Consent Decree shall constitute a final judgment between and among the United States and the Settling Defendants. The Court finds that there is no just reason for delay and therefore enters this judgment as a final judgment under Fed. R. Civ. P. 54 and 58.

SO ORDERED THIS ____ DAY OF _____, 2007.

United States District Judge

THE UNDERSIGNED PARTIES enter into this Consent Decree in the matter of United States v. Liberty Property Limited Partnership et al. relating to the Crater Resources Superfund Site.

FOR THE UNITED STATES OF AMERICA

RONALD J. TENPAS
Acting Assistant Attorney General
U.S. Department of Justice
Environment and Natural Resources Division
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

ROBERT D. BROOK
Environmental Enforcement Section
Environment and Natural Resources Division
U.S. Department of Justice
Washington, D.C. 20530

PATRICK L. MEEHAN
UNITED STATES ATTORNEY

MARGARET HUTCHINSON
Assistant United States Attorney
Eastern District of Pennsylvania
U.S. Department of Justice
615 Chestnut Street
Suite 1250
Philadelphia, PA 19106

DONALD S. WELSH

Regional Administrator, Region III
U.S. Environmental Protection Agency
1650 Arch Street
Philadelphia, PA 19103

WILLIAM C. EARLY

Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

PATRICIA C. MILLER

Senior Assistant Regional Counsel
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia, PA 19103

FOR LIBERTY PROPERTY LIMITED PARTNERSHIP and LIBERTY PROPERTY TRUST

[Signature]

Please Type the Following:

Please type the following:

Name: **WILLIAM P. HANKOWSKY**
CHAIRMAN, PRESIDENT AND CEO

Title: _____

Address: 500 Chesterfield PKwy
Malvern PA 19355

Agent Authorized to Accept Service on Behalf of Above-Signed Party:

Please Type the Following:

Name: James J. Fowles, Esquire

Title: ~~Secretary and General Counsel~~

Address: 500 Chesterfield Parkway, Malvern, PA 19355

Telephone: 610-648-1715